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JUL 3 2002

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**SAN FRANCISCO
PORT COMMISSION**

REGULAR MEETING

4:00 P.M., TUESDAY, JULY 9, 2002

BAYSIDE CONFERENCE ROOM

PIER 1, SAN FRANCISCO, CA 94111

AGENDA

- 1. ROLL CALL**
- 2. APPROVAL OF MINUTES** - June 25, 2002 Regular Meeting
- 3. EXECUTIVE**
 - A. Executive Director's Report
 - July 4th Waterfront Celebration
 - China Basin Park Groundbreaking Ceremony on July 16th at 10am.
- 4. ENGINEERING & MAINTENANCE**
 - A. Request for authorization to advertise for competitive bids for Pier 70 Wharf 5 Demolition Project. (Resolution No. 02-25) (Staff report provided to the Commission.)
 - B. Request for authorization to advertise for competitive bids for Pier 48 electrical upgrades. (Resolution No. 02-26) (Staff report provided to the Commission.)
 - C. Request for authorization to advertise for competitive bids for Pier 45 Shed C Fish Processing Facilities Improvements. (Resolution No. 02-27) (Staff report provided to the Commission.)
- 5. PLANNING & DEVELOPMENT**
 - A. Request for approval and ratification of the grant agreement to accept and expend \$200,000 in grant funds from the State Wildlife Conservation Board to construct public access improvements for the Ferry Terminal Public Pier. (Resolution No. 02-28) (Staff report provided to the Commission.)
 - B. Request for authorization to enter into a contract with the consultant team led by Economics & Planning Systems, Inc. for an additional \$60,000 for further assistance negotiating the Disposition and Development Agreement and related transaction documents relating to the Bryant Street Pier Project. (Resolution No. 02-29) (Staff report provided to the Commission.)

- C. Informational Presentation on the South Beach Park and Harbor Improvement Project. (No Action Required) (Staff report provided to the Commission.)
- D. Request for approval of extension of Exclusive Negotiations for Embarcadero Hotel Project at Broadway on Seawall Lots 323, 324 and 322-1. (Resolution No. 02-30) (Staff report provided to the Commission.)

6. REAL ESTATE

- A. Request for adoption of CEQA Findings and for approval to lease a portion of Pier 45, Shed A to San Francisco Museum and Historical Society and its proposed sublessee, Musee Mecanique, for a short term use. (Resolution No. 02-31) (Staff report provided to the Commission.)

7. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to all Commissioners for review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

8. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

- (1) PUBLIC EMPLOYEE APPOINTMENT – This is specifically authorized under California Government Code Section 54957.

- a. Confirmation of Appointment of the Port's Director of Real Estate.

- (2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

This session is closed to any non-City/Port representative. *

- a. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*The Mills Corporation: Steven Jacobsen

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located Piers 27-31.

- b. Property: South Beach Development Area @ Pier 40
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*SF Redevelopment Agency: Amy Neches

Under Negotiation: ___ Price ___ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located Pier 40.

- c. Property: Piers 38
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Pier 38 Maritime Recreational Center: Carl Ernst

Under Negotiation: ___ Price ___ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located Pier 38.

- d. Property: Pier 45
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Red & White Fleet: Tom Escher

Under Negotiation: ___ Price ___ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 45.

- e. Property: Pier 7
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Waterfront Restaurant: Al Falchi

Under Negotiation: ___ Price ___ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 7.

9. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

10. ADJOURNMENT

Staff Reports: Explanatory Documents available to the public are posted on the Port's Website at www.sfport.com.

JULY/AUGUST 2002
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
July 9	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
<i>Cancelled - July 23</i>	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
<i>Cancelled - August 13</i>	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
August 27	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406 to be placed on the mailing list for Commission meeting agenda. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Person: Kirk Bennett @ 274-0545.

Please note change of meeting date: The Maritime Commerce Advisory Committee (MCAC) *meets every other month on the third Thursday* at 11:30 a.m. in Bayside 1 @ Pier 1. Contact Person: Jill Simpson @ 274-0519. The next meeting is scheduled on September 19, 2002.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:00 to 7:00 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Person: Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact Person: David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Kevin Jensen, ADA Coordinator, at 274-0555. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

July 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Request for authorization to advertise for competitive bids for Construction Contract No. 2672, Pier 70 Wharf 5 Demolition Project

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR THE PIER 70 WHARF 5 DEMOLITION PROJECT, CONTRACT NO. 2672

Introduction

Port staff requests that the Commission authorize the advertisement for competitive bids for construction contract No. 2672, Pier 70 Wharf 5 Demolition Project. The scope of the project includes demolition and disposal of Pier 70 Wharf 5, a wharf approximately 50 feet wide by 820 feet long, as set forth in the construction documents.

Background

Wharf 5 at Pier 70 is a part of the SF Drydock leasehold and has not been used for years. Recent inspections by Port staff found that some sections of Wharf 5 have partially collapsed, and the wharf continues to deteriorate. Debris from Wharf 5 has been found in the nearby area, creating a hazard to navigation and a potential liability for the Port. The entire wharf is in danger of collapse and should be demolished as soon as possible. Further collapse of the wharf may increase clean up costs and hazards to navigation.

Port staff submitted permit applications to the U. S. Army Corps of Engineers in October 2001 and the Bay Conservation and Development Commission (BCDC) in November 2001. Staff anticipates receiving the required permits sometime this summer. The construction contract will not be awarded until these permits have been issued.

This Print Covers Calendar Item No. 4A

Funding

The Engineer's estimate for this project is \$800,000. The project cost can be funded with Port capital funds from the Pier Repair fund. However, staff continues to investigate alternate sources of grant funding as the schedule allows.

Summary

San Francisco Dry Dock and the Port's Maritime Department desire the demolition and removal of Wharf 5. Port staff recommends that the Commission authorize the advertisement for competitive bids for construction contract No. 2672, Pier 70 Wharf 5 Demolition Project. This contract will help the Port assure the safety of maritime navigation in the area and avoid further costs associated with continued deterioration of the structure.

Prepared by: Ken Chu, Project Engineer, for
Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 02-25**

- WHEREAS, Wharf 5 at Pier 70 is a part of the SF Drydock leasehold and has not been used for years; and
- WHEREAS, recent inspections by Port staff found that some sections of Wharf 5 have partially collapsed, and the wharf continues to deteriorate; and
- WHEREAS, debris from Wharf 5 has been found in the nearby area, creating a hazard to navigation and a potential liability for the Port; and
- WHEREAS, the entire wharf is in danger of collapse and should be demolished as soon as possible, further collapse of the wharf may increase clean up costs and hazards to navigation ; and
- WHEREAS, Port staff has submitted permit applications to the U. S. Army Corps of Engineers in October 2001 and the Bay Conservation and Development Commission (BCDC) in November 2001; and Port staff expects these required permits to be issued this summer; and
- WHEREAS, San Francisco Dry Dock and the Port's Maritime Department desire the demolition and removal of wharf 5; and
- WHEREAS, the Pier 70 Wharf 5 Demolition Project will enable the Port to assure safe maritime navigation in the area and avoid further costs associated with continued deterioration of the structure; and
- WHEREAS, the Engineer's cost estimate for this project is \$800,000, which can be funded with Port capital monies from the Pier Repair fund.
- WHEREAS, Staff continues to investigate alternate sources of grant funding as the schedule allows; now therefore be it,
- RESOLVED, that the Port Commission hereby authorizes Port staff to advertise for competitive bids for construction Contract No. 2672, Pier 70 Wharf 5 Demolition Project.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to Advertise for Competitive Bids for Pier 48 Electrical Service,
Contract No. 2677

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS TO CONSTRUCT THE UPGRADE OF ELECTRICAL AND TELEPHONE SERVICES AT PIER 48.

INTRODUCTION

Port staff requests that the Commission authorize the advertisement for competitive bids to construct the upgrade of electrical services at Pier 48. Completion of this work and the seismic retrofit project would implement the majority of the repairs required to lease the facility.

BACKGROUND

Pier 48 supports a two-shed complex of approximately 181,350 square feet located along the southern waterfront south of China Basin. The facility is currently vacant and is currently undergoing a seismic upgrade with insurance proceeds due to fire damage that occurred on November 26, 1996. To optimize the leasing potential of this pier, the Port has or will complete the following improvements:

- Under an emergency declaration approved by the Port Commission on December 13, 1996, Port staff completed Contract 2636 for the building shell repair and reconstruction work in 1988.
- In early 2002, Port staff completed Contract 2665 for the interior portion of the fire damage repair (i.e., installation of a code upgrade fire sprinkler system, restrooms, the building's electrical and mechanical systems, and provisions for access and egress in compliance with code and Americans with Disabilities Act requirements).
- Currently, Port staff is administering Contract 2673 for the seismic upgrade of Pier 48.

This Print Covers Calendar Item No. **4B**

CURRENT STATUS

An upgrade to the electrical service to the two sheds (Shed A and B) would complete the majority of the repairs to Pier 48. The proposed work entails the following:

- Pulling electrical and telephone lines through underground conduit to Shed A and B from an existing offsite telephone and electrical distribution source;
- Upgrading two existing switchboards with increased electrical and telephone service;
- Installing two new switchboards (one inside Shed A and one inside Shed B) with new electrical and telephone service; and
- Installing a new transformer and pad.

The design has been completed and is awaiting final approval from Pacific Gas and Electric (PG&E).

The contractor performing the seismic retrofit retains site control until completion of their portion of the work (Contract 2673). The anticipated milestones for the seismic retrofit are as follows:

- Notice to Proceed (NTP) – January 29, 2002
- Install Super Piles in the Valley – September 19, 2002
- Retrofit Superstructure – August 19, 2002
- Project Completed – October 24, 2002

The contractor chosen for the electrical upgrade contract will need to closely coordinate the work with the seismic contractor to avoid logistical conflicts, yet manage the work under an accelerated schedule to minimize further rental losses caused by the current inability to lease the facility. Therefore, though the specific bid schedule is yet to be determined, we anticipate the following schedule:

- Publish Advertisement for Bids – July 2002
- Contract Award – August 2002
- NTP – September 2002
- Project Completed – December 2002

Port staff seeks authorization from the Commission to advertise for competitive bids for this project. The engineer's estimate for the proposed work is \$370,000 and the project cost will be funded from Port capital funds for fiscal year 2001-2002.

Prepared by: Kathy Nakazawa, Project Manager, for
Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-26

- WHEREAS, the Port has received insurance proceeds to repair damage caused by the fire at Pier 48; and
- WHEREAS, the Port has approved additional capital funds towards further improvements for Pier 48, including the upgrade of electrical service; and
- WHEREAS, the Port has completed structural exterior and interior repair, and fire sprinkler upgrade work, and is currently administering a contract for seismic upgrading of Pier 48; and
- WHEREAS, further basic improvements are necessary to lease Shed A and B to potential tenants, and such improvements include the upgrade of electrical and telephone services to both sheds; and
- WHEREAS, Port staff has completed the design drawings and specifications for the proposed electrical work; and
- WHEREAS, the estimated cost of the work is \$370,000, which will be funded with Port capital monies; now therefore be it
- RESOLVED, that the San Francisco Port Commission hereby authorizes Port staff to advertise for competitive bids to construct the upgrade of electrical and telephone services to Pier 48.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to advertise for Competitive Bids for Pier 45 Shed C Fish Processing Facilities Improvements, Construction Contract No. 2674.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF PIER 45 SHED C FISH PROCESSING FACILITIES IMPROVEMENTS, CONTRACT NO. 2674.

A cross-functional Port staff team has been working to complete the design of the new fish processing facilities at Pier 45 Shed C. Staff is now in the process of preparing the final construction documents in anticipation of the bidding the project.

The main components of the program include:

- 1) 45,300 sq. ft. of space to be leased to fish processing businesses;
- 2) 27,600 sq. ft. of corridors and vehicular circulation space within Shed C;
- 3) Improvements to the building exterior and roof;
- 4) Tenant shell spaces with demising walls;
- 5) New raised ramps at the ends of Sheds C and D for wheelchairs and fork lifts;
- 6) Other improvements to comply with the Federal Americans with Disabilities Act and State Title 24 requirements;
- 7) A trash compaction system for solid wastes; and
- 8) Infrastructure improvement stub outs necessary for tenants to develop their demised spaces listed below:
 - a) Water, gas and telecommunication service;
 - b) 480 volt, 3-phase electric service;
 - c) Large capacity sanitary sewers that connect off-site to the City sanitary sewer system under Taylor Street and Jefferson Streets.

This Print Covers Calendar Item No. 4C

Employee parking for fish processing businesses in Pier 45 Shed C will be offered between 4:00 am to noon in the Triangle Parking Lot (bounded by The Embarcadero, and Jefferson and Taylor Streets).

In conjunction with this project, the parking adjacent to Sheds B and D will be restriped by Port staff to accommodate an angled layout to better manage vehicular flows and emergency pedestrian egress. Port staff will also be modifying the loading docks on Sheds B and D to accommodate this new parking layout.

Port staff has continued to work with the community on the design and implementation of this project. We will be coordinating work with the seasonal fishing schedules to minimize impacts to the fish processors on the pier.

The budget for the improvements includes \$4,450,000 from Port capital funds and a \$1,500,000 state grant for a total project budget of \$5,950,000.

We anticipate advertising for bids in early August with construction to begin in December of this year. As the construction documents are nearly complete, Port staff requests authorization from the Commission to advertise for construction bids for this project.

Prepared by: Tom Trimbur, Project Manager,
for Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-27

WHEREAS, on June 24, 1997 (by Resolution No. 97-50), the Port Commission adopted the Waterfront Land Use Plan, which included as its first objective for the Fisherman's Wharf Waterfront: "Restore and expand Fisherman's Wharf as a working fishing port."; and

WHEREAS, on October 14, 1997 (by Resolution No. 97-83), the Port Commission adopted guidelines regarding long term uses for Pier 45 Sheds A and C, which stated that "Shed C to be reserved for fishing industry uses including fish processing and wholesaling, truck access, storage, and employee parking."; and

WHEREAS, on November 9, 2000 (by Resolution No. 00-87), the Port Commission (1) established the Pier 45 Shed C project as a top priority for funding in the Port's 2001-02 FY Capital Plan, (2) authorized and directed Port staff to immediately commence the planning, design and engineering of improvements for fishing industry uses in Pier 45 Shed C, and (3) directed Port staff to pursue grant funding for the Pier 45 Shed C Project; and

WHEREAS, On February 27, 2001 (by Resolution No. 01-10), the Port Commission approved the Port's 2001-02 FY Capital Plan, which included \$4,450,000 of total funding for the Pier 45 Shed C project; and

WHEREAS, On December 11, 2001 (by Resolution No. 01-95), the Port Commission (1) approved the Schematic Design Plan for the Pier 45 Shed C Project, (2) adopted the environmental review and project approval findings, and (3) authorized the Port to apply for, accept and expend funds from the California Technology Trade and Commerce Agency and to enter into a funding agreement with the State; and now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to advertise for competitive bids to construct Pier 45 Shed C Fish Processing Facilities Improvements.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Approval and ratification of the Executive Director's execution of an Operating Agreement and Standard Agreement between the Port of San Francisco and the State of California Wildlife Conservation Board to accept and expend \$200,000 in grant funds from the Wildlife Conservation Board for the Ferry Terminal Public Pier Project.

DIRECTOR'S RECOMMENDATION: APPROVE AND RATIFY THE EXECUTIVE DIRECTOR'S EXECUTION OF AN OPERATING AGREEMENT AND STANDARD AGREEMENT BETWEEN THE PORT AND THE WILDLIFE CONSERVATION BOARD TO ACCEPT AND EXPEND GRANT FUNDS FROM THE WILDLIFE CONSERVATION BOARD FOR THE FERRY TERMINAL PUBLIC PIER PROJECT.

Project Description. The proposed Ferry Terminal Public Pier Project is an element of the Downtown Ferry Terminal Project, currently under construction. Southern berths at the Downtown Ferry Terminal will be protected from winter storm surge by the new, freestanding breakwater, which the Port completed in July 2001 at a cost of \$3 million. The proposed Public Pier Project would finish the top of the breakwater with public pedestrian improvements and connect it to Herb Caen Way (The Embarcadero).

The proposed Public Pier would take advantage of its unique condition, utilizing a needed breakwater as a landmark public access fishing and recreation pier. Under the Project, the Port would construct an approximately 100-foot pier extension to connect the freestanding breakwater to the Embarcadero Promenade, and a circular terminus at the other end of the pier, extending 600-feet into the Bay. This project will allow visitors to walk out over the Bay and fish, view interpretive signage about ferry activities, Bay currents and habitat, observe ferry activities in the new, adjacent harbor, and enjoy views of the City and Bay Bridge.

This Print Covers Calendar Item No. 5A

The breakwater, as constructed, has been designed to accommodate the public access improvements. The concrete topping slab was installed as the finished pavement for the public pier, conduit was embedded within the slab for pedestrian lighting, and railing brackets were placed into the topping slab.

Environmental Review. On August 8, 1997, the San Francisco Planning Department adopted a final negative declaration, finding that there is no substantial evidence that the Project could have a significant effect on the environment. The Negative Declaration included the breakwater structure as well as an Embarcadero Promenade extension and a connecting 300-foot trestle structure to allow public access. A copy of the Negative Declaration is on file with the Secretary of the Port Commission for this item.

Regulatory Approvals. The Ferry Terminal Public Pier has received all the needed regulatory approvals from BCDC, the Army Corp of Engineers, and the Regional Water Quality Control Board. The Project has been designed, permitted, fully approved and is ready to be constructed. It is part of the Port's *Waterfront Land Use Plan*, and is supported by BCDC, the California State Coastal Conservancy, the Association of Bay Area Governments, Save San Francisco Bay Association, other agencies, and citizen groups.

Project Funding. The total cost of the Public Pier improvements is estimated at approximately \$1.45 million. The Port recently secured several grants for this Project bringing the total anticipated available funding to \$1.26 million. The attached resolution will authorize the Port to accept and expend the \$200,000 from the Wildlife Conservation Board that should complete the Project funding for construction.

Funding Sources

California Coastal Conservancy	\$400,000
Port Capital	300,000
ABAG Bay Trail	200,000
California Resources Agency - CIAP*	105,000
DPW Departmental Funds	50,000
CA Transportation Comm EEM Grant	200,000
<u>Wildlife Conservation Board*</u>	<u>200,000</u>
<u>Total:</u>	<u>\$1,455,000</u>
Total estimated Project cost:	\$1,450,000

* Grants not yet awarded.

Project Schedule. Upon successful completion of funding, the Port's Engineering Division will finalize the construction documents by September 2002, bid and award a contract by January 2003, and complete construction by June 2003.

Wildlife Conservation Board Grant. As a condition of funding this grant agreement, the State of California, through the Wildlife Conservation Board, requires the Port to execute an Operating Agreement and Standard Agreement for the Public Pier Project. These agreements place certain limitations on the development, use, operation, and maintenance of the Public Pier on a cooperative basis with the State for a twenty-five (25) year term. These minor limitations

are generally consistent with the Port's intended use and purpose of the pier and the Waterfront Land Use Plan. The Operating Agreement and Standard Agreement, including the full list of Project limitations, are attached to this Staff Memorandum as Attachment 1. The principal limitations are summarized below:

- Name: The name FERRY TERMINAL PUBLIC PIER must be used on all documents, signs, publications, brochures, general literature or news releases. The Port cannot rename the Project without approval of State.
- Term: The Term of the Operating Agreement is twenty-five (25) years commencing August 22, 2002. This agreement may be extended, amended or terminated by mutual agreement of the Port and the Wildlife Conservation Board.
- Use: The Public Pier may be used only for sport fishing or other wildlife-related or appropriate recreational activities; however, the Port may use the premises for temporary or special purposes through agreement with others. The Public Pier must be available without charge, and there can be no restrictions to public ingress or egress at any time except when necessary for maintenance, repair, public safety, security, or for protection of the structure or facilities. The Port must notify the State within 48 hours of making such closures.
- Project Signs: The Project sign must display the names Ferry Terminal Public Pier, the Port of San Francisco, the Wildlife Conservation Board and other State agencies involved. Should the Project be funded all or in part by the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000 (Bond Act 2000), the Port is required to install and maintain a sign within or near the Project site in accordance with the "Proposition 12 Park Bond Guidelines". The Port and the State will mutually agree upon the location and design of the Project sign.
- Additional Improvements: The Port may, at its own cost, place or construct additional structures, alterations, or improvements with the prior written approval of the State. In the event the Operating Agreement is terminated, the State may require removal of such improvements.
- Concessions: The Port may enter into agreements with third parties to provide services, conveniences, or facilities to complement the Public Pier Project which are consistent with the use and purpose of the Project. In addition, any revenues from such services or concessions must be used solely for the operation and maintenance of the Project, the Port must maintain adequate records of revenues and expenditures, make records available for audit, and the Port must obtain prior approval from the State for any such agreements with concessionaires. The Port does not anticipate any concession activity on the Public Pier given its purpose as a public access fishing and recreation pier.

Additionally, the State's Operating Agreement contains the Wildlife Conservation Board's standard indemnity provision, requiring the Port to indemnify and hold the State harmless against claims, damages and liability arising out of the Project. The City Risk Manager and the City Attorney's Office have reviewed and approved the indemnity provision.

For the Project to be included in the Wildlife Conservation Board's current cycle of funding, the Wildlife Conservation Board required the Port staff to execute both the Operating Agreement and Standard Agreement no later than June 28, 2002. Therefore, to secure the funding, staff has executed both Agreements, for which it now seeks Commission approval and ratification.

Commission Action. Port staff seeks Commission approval and ratification of the Executive Director's execution of the Operating Agreement and Standard Agreement for the Public Pier Project, and to accept and expend \$200,000 in grant funds from the Wildlife Conservation Board for the Ferry Terminal Public Pier Project.

Prepared by: Dan Hodapp
Senior Waterfront Planner

ATTACHMENT 1

OPERATING AGREEMENT AND STANDARD AGREEMENT
FOR FERRY TERMINAL PUBLIC PIER PROJECT

When recorded mail to:

STATE OF CALIFORNIA
Department of Fish and Game
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, California 95814

Space above this line for Recorder's Use

OPERATING AGREEMENT
FOR
FERRY TERMINAL PUBLIC PIER,
SAN FRANCISCO COUNTY

This Operating Agreement is made and entered into this 22nd day of August, 2002, between the City and County of San Francisco, acting by and through the Port of San Francisco, hereinafter called "Operator" and the STATE OF CALIFORNIA, acting through the Department of Fish and Game, hereinafter called "State". Operator and State hereby agree as follows:

I. RECITALS

- (a) Operator has under its control pursuant to the Burton Act, 1969, State granted tidelands and submerged lands on which the Ferry Terminal breakwater structure, the subject of this agreement, is located.
- (b) Operator and State desire to use said lands for use as a public recreational facility called the Ferry Terminal Public Access Pier and provide for the construction of a pier approach and improvements to the breakwater, and for operation and maintenance on a cooperative basis, said activity herein referred to as the "Project."
- (c) The development, use, operation and maintenance of the Project on a cooperative basis is in accordance with the authorization of State's Wildlife Conservation Board on August 22, 2002 and Operator's Resolution No. _____.

II. GENERAL TERMS AND CONDITIONS

- (d) PROJECT NAME: FERRY TERMINAL PUBLIC PIER. This name shall be used in all documents, signs, publications, brochures, general literature or news releases, and Operator shall not rename the Project without the approval of State.
- (e) EXHIBITS: This agreement incorporates by reference Exhibit A (Standard Terms and Conditions), Exhibit B (Plans or Project Description) and Exhibit C (Project Area Legal Description).
- (f) PROJECT DEVELOPMENT: The development or improvement of facilities on said area, as described in Exhibit B hereof, will be carried out by separate agreement, Standard Agreement WC-2018BT. Within ninety (90) days of completion of construction of any development or improvement of facilities, Operator shall submit a copy of As-built plans of such development or improvement to State.
- (g) PROJECT FINANCING: State will pay Operator for a portion of the development of the Project in accordance with that Standard Agreement WC-2018BT and Operator will provide the additional funding needed to develop the Project.
- (h) TERM: The Term of this agreement is twenty-five (25) years commencing with the date hereof. This agreement may be extended or amended by mutual agreement of the parties hereto, or terminated as hereinafter provided.
- (i) NOTICES: Notices required between the Operator and State will be deemed to have been given when mailed to the respective addresses below, first-class postage fully prepaid thereon:

Ferry Terminal Public Pier
WC-2018BT

To Operator: Attn: Director, Planning & Development

Port of San Francisco
Pier 1
San Francisco, CA 94111

To State: State of California
Department of Fish and Game
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95814

PORT OF SAN FRANCISCO

BY 
Douglas Wong
Executive Director

Date Signed: 6/28/02

STATE OF CALIFORNIA
Department of Fish and Game
Wildlife Conservation Board

BY _____
Al Wright
Executive Director

Date Signed: _____

Approved as to form:
Dennis J. Herrera, City Attorney

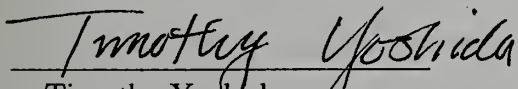
By: 
Timothy Yoshida
Deputy City Attorney

EXHIBIT A

STANDARD TERMS AND CONDITIONS TO OPERATING AGREEMENT

I. SCOPE AND PURPOSE

1. **SCOPE:** This Agreement pertains to the facilities and improvements as described in Exhibit B hereof and to the area as shown on Exhibit C hereof. The development, use, operation and maintenance of such facilities on the described area are called the Project.
2. **PURPOSE AND USE:** The Project premises and every part thereof shall be used only for sport fishing or other wildlife-related or appropriate recreational activities. Subject to Paragraph 6 hereof, Operator may use the premises for temporary or special purposes through agreement with others. The premises and Project facilities shall, unless otherwise specifically provided herein, be available without charge, and there shall be no restrictions to public ingress or egress at any time except when it is necessary to close the area for maintenance, repair, public safety, security, or for protection of the structure or facilities. Operator shall notify State within 48 hours of making such closures.

II. MAINTENANCE AND OPERATION

3. **MAINTENANCE:** Upon satisfactory completion of the Project construction, Operator shall provide all normal Project maintenance and operation of the area and improvements thereon for and in accordance with the purposes expressed and, except for occurrences beyond the control of the Operator, or "Acts of God", shall make all reasonable and necessary repairs, replace broken, damaged or worn structural components or fixtures so as to keep the structures and facilities in a safe usable condition, and perform housekeeping operations as required so as to keep the premises and improvements clean, attractive, and free of accumulations of litter, garbage, or debris. Equipment and materials not needed for routine maintenance operations shall not be stored or stockpiled on the premises.
4. **PROJECT SIGNS:** A Project sign shall be installed at project cost, and maintained by

Operator. The Project sign shall show the name of the Project, the Operator and State agency or agencies involved and, should the project be funded all or in part by the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000 (Bond Act 2000), then Operator is required to install and maintain a sign at a conspicuous and appropriate location within or near the project site in accordance with the "Proposition 12 Park Bond Guidelines" available from the Board or online at www.resources.ca.gov/bond. The location and makeup of the Project sign, including dimensions, materials and lettering, shall be as mutually agreed upon by Operator and State.

5. ADDITIONAL IMPROVEMENTS: Except as provided by separate agreement as herein above described, State shall not be obligated to make or cause to be made any further developments, or to make improvements or repairs to any structures or facilities within the Project area. However, Operator may at its own cost place or construct on the premises any structures, alternations or improvements in addition to those set forth and described herein as the Project, provided that they:

- (a) are in accord with the purposes herein set forth;
- (b) are constructed, maintained and operated for the use, enjoyment, service and protection of the public;
- (c) do not directly or indirectly reduce, restrict or interfere with the primary purposes of the Project; and
- (d) have the prior written approval of the State.

Any improvements made and installed on the premises at Operator's cost shall be and remain the property of Operator during the term thereof, but in the event this agreement is terminated, State may require Operator to remove said improvements, or have them removed and charge Operator for the cost thereof.

6. CONCESSIONS: The term concessions means activity involving the sale of products. Operator may enter into agreements with others to provide services, conveniences or

facilities to complement the Project improvements provided that:

- (a) the purpose of any such agreement is consistent with the purposes and uses described herein;
- (b) any revenues received by Operator from such concession agreements are deposited in a special account identified with the Project and are used solely for operation and maintenance of Project;
- (c) Operator maintains adequate records of revenues and expenditures relating to any such concession agreements and makes them available for audit when requested by State; and
- (d) such agreements, including the percentages of revenue to be distributed to Concessionaire and Operator, are approved by State prior to award.

III. GENERAL PROVISIONS

- 7. ASSIGNMENT: Operator shall not assign this agreement in whole or in part, nor delegate any of its rights, duties or interests unless otherwise specifically provided for in the agreement.
- 8. LIABILITY: Operator hereby waives all claims and recourse against State including the right to contributions for any loss or damage arising from, growing out of, or in any way connected with or incident to this agreement or the Project except claims arising from the concurrent or sole negligence of State, its officers, agents and employees. Further, Operator shall indemnify, hold harmless, and defend State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability arising out of the design, construction, operation, maintenance, existence or failure of the Project. If State is named as co-defendant pursuant to Government Code Sections 895 et seq., Operator shall notify State and represent it, unless State elects to represent itself, in which case State shall bear its own litigation costs, expenses and attorney's fees.
- 9. INDEPENDENT CONTRACTOR: Operator and any of its officers, agents and employees shall, in the performance of this agreement, act in an independent capacity and

not as officers, agents or employees of State.

10. NONDISCRIMINATION: Operator hereby certifies that in the performance of its responsibilities and duties under this agreement and any assignment thereof, and in the administration of any concession agreement for services or accommodations, it will comply with all State and Federal nondiscrimination laws, and the area will be open and accessible for the use and enjoyment of the general public on equal and reasonable terms.
11. BREACH: In the event Operator fails to comply with any of the terms and conditions of this agreement, State may, after written notice to Operator to remedy the breach and a period of ninety (90) days, correct any deficiency or cause of breach and charge Operator all costs in connection therewith, including administrative costs.
12. TERMINATION: This agreement shall be for the term commencing with the date hereof and ending twenty-five (25) years thereafter. The Operator hereby agrees that the State may terminate this agreement at any time during the term hereof by giving notice to the Operator at least ninety (90) days prior to the date when such termination shall become effective. The operator may terminate this agreement only with the consent of the State and, if the State so consents, such termination shall be effective on such date as the parties may agree.
13. WAIVER OF RIGHTS: It is the intention of the parties to this agreement that from time to time either party may waive certain of its rights under the agreement. Any such waiver by the parties hereto of their rights with respect to default or any other matter arising in connection with this agreement shall not be deemed to be a waiver with respect to any other default or matter.
14. REMEDIES NOT EXCLUSIVE: The use by either State or Operator of any remedy specified in the agreement for the enforcement of the agreement is not exclusive and shall not deprive the party using such remedy, or limit the application of any other remedy provided by law.
15. SUCCESSORS AND ASSIGNS: This agreement and all its provisions shall apply to and bind the successors and assigns of the parties hereto.

16. OPINIONS AND DETERMINATIONS: Where the terms of the agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either State or Operator, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

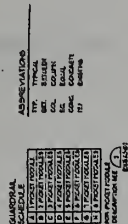
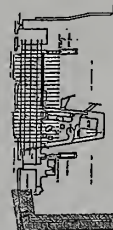
Ferry Terminal Public Pier
WC-2018BT

Forms\LseOperAgr (4/00)

EXHIBIT B

SITE PLAN OR PROJECT DESCRIPTION

To be provided by Port of San Francisco

[illegible]

1 BREAKWATER
1" = 20' (SEE LAYOUT)

**DOWNTOWN FERRY TERMINAL
PORT OF SAN FRANCISCO**

[illegible]

EXHIBIT C

Legal Description of Project Area

FERRY TERMINAL PUBLIC PIER LEGAL DESCRIPTION

Being a pier and a breakwater in San Francisco Bay on a portion of The Embarcadero and on bay lands of the San Francisco Port Commission, City and County of San Francisco, State of California, more particularly described as follows:

Commencing at the point of intersection of the monument line of Spear Street with the monument line of Mission Street, as said point is shown on Monument Map Sheet 317 of the City and County of San Francisco, Department of Public Works, on file in the office of the Bureau of Street Use and Mapping of said Department of said City and County;

Thence along the northeasterly prolongation of said monument line of Mission Street, North $46^{\circ} 18' 03''$ East, 699.07 feet;

Thence South $43^{\circ} 41' 57''$ East, 276.12 feet;

Thence North $46^{\circ} 28' 03''$ East, 58.57 feet the True Point of Beginning;

Thence North $56^{\circ} 17' 18''$ East, 20.22 feet, to a point on the southwesterly prolongation of the southerly line of an existing breakwater;

Thence along said prolongation and southerly line, North $54^{\circ} 51' 44''$ East, 609.68 feet, to a point on a nontangent curve to the left, having a radius of 15.00 feet; a radial to said curve at said point bears South $24^{\circ} 51' 44''$ West;

Thence along said curve through a central angle of $300^{\circ} 00' 00''$, an arc length of 78.54 feet;

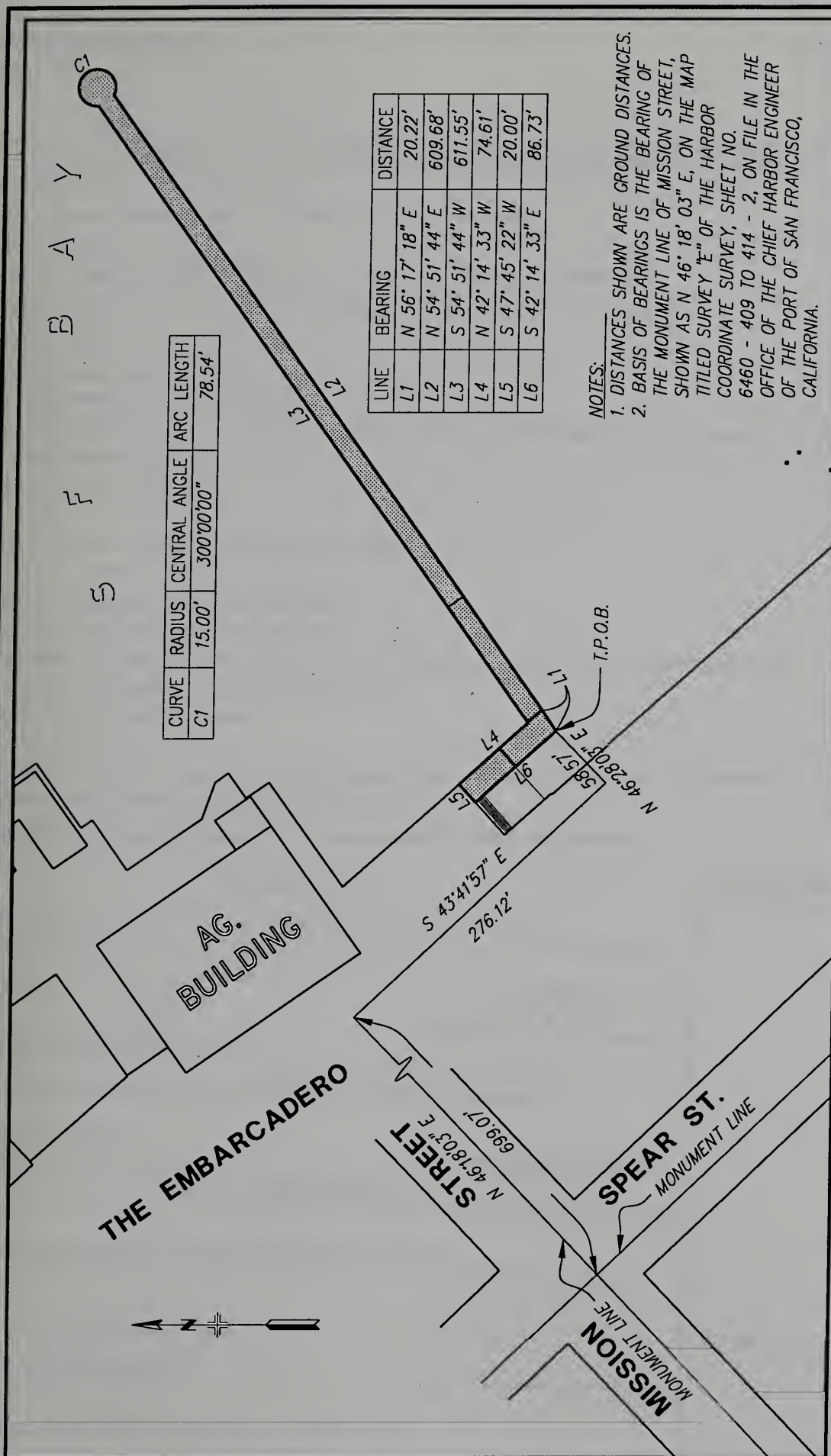
Thence South $54^{\circ} 51' 44''$ East, 611.55 feet;

Thence North $42^{\circ} 14' 33''$ West, 74.61 feet;

Thence South $47^{\circ} 45' 22''$ West, 20.00 feet;

Thence South $42^{\circ} 14' 33''$ East, 86.73 feet to the True Point of Beginning;

Containing 11,610 square feet (0.267 acres), more or less.



NOTES:

1. DISTANCES SHOWN ARE GROUND DISTANCES.
2. BASIS OF BEARINGS IS THE BEARING OF THE MONUMENT LINE OF MISSION STREET, SHOWN AS N 46° 18' 03" E, ON THE MAP TITLED SURVEY "E" OF THE HARBOR COORDINATE SURVEY, SHEET NO. 6460 - 409 TO 414 - 2, ON FILE IN THE OFFICE OF THE CHIEF HARBOR ENGINEER OF THE PORT OF SAN FRANCISCO, CALIFORNIA.

CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH
C1	15.00'	300°00'00"	78.54'

LINE	BEARING	DISTANCE
L1	N 56° 17' 18" E	20.22'
L2	N 54° 51' 44" E	609.68'
L3	S 54° 51' 44" W	611.55'
L4	N 42° 14' 33" W	74.61'
L5	S 47° 45' 22" W	20.00'
L6	S 42° 14' 33" E	86.73'

APPROVED BY SAN FRANCISCO PORT COMMISSION DATE _____		PORT OF SAN FRANCISCO SAN FRANCISCO PORT COMMISSION DEPARTMENT OF ENGINEERING		FERRY TERMINAL PUBLIC PIER SITE MAP		DESIGNED BY: C. BAGNESCHI DRAWN BY: AMN DATA FILE: ---- DRAWING NO. _____		CHECKED BY: ---- DATE: 25 JUN 02 SCALE: 1" = 120' SHEET NO. 1 OF 1 SHEETS BREAKWATER DWG	
--	--	---	--	---	--	--	--	---	--

AGREEMENT NUMBER
WC-2018BT

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Wildlife Conservation Board, Department of Fish and Game

CONTRACTOR'S NAME

City of San Francisco, by and through the San Francisco Port Commission

2. The term of this Agreement is: August 22, 2002 through June 30, 2003

3. The maximum amount of this Agreement is: \$ 200,000

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 2 pages

Exhibit B – Budget Detail and Payment Provisions 2 pages

Exhibit C* – General Terms and Conditions

Check mark one item below as Exhibit D:

☐ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement) XX pages

☐ Exhibit - D* Special Terms and Conditions

Exhibit E – Additional Provisions XX pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

California Department of General
Services Use Only

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

City and County of San Francisco, by and through the San Francisco Port Comm.

BY (Authorized Signature)

DATE SIGNED (Do not type)

APPROVED AS TO FORM:

PRINTED NAME AND TITLE OF PERSON SIGNING

Doug Wong, Executive Director DENNIS J. HERRERA
City Attorney

ADDRESS

c/o Port of San Francisco
Pier 1, San Francisco CA 94111

STATE OF CALIFORNIA

Deputy City Attorney

AGENCY NAME

Wildlife Conservation Board, Department of Fish and Game

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Al Wright, Executive Director

ADDRESS

807 13th Street, Suite 103, Sacramento CA 95814-7117

☐ Exempt per:

AGREEMENT NUMBER
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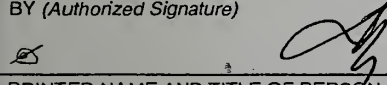
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

City and County of San Francisco, by and through the San Francisco Port Comm.

BY (Authorized Signature)


PRINTED NAME AND TITLE OF PERSON SIGNING

DATE SIGNED (Do not type)
6/28/2002
APPROVED AS TO FORM:

Doug Wong, Executive Director DENNIS J. HERRERA
City Attorney

ADDRESS

c/o Port of San Francisco
Pier 1, San Francisco CA 94111

STATE OF CALIFORNIA

Deputy City Attorney

AGENCY NAME

Wildlife Conservation Board, Department of Fish and Game

BY (Authorized Signature)


PRINTED NAME AND TITLE OF PERSON SIGNING

Al Wright, Executive Director

ADDRESS

1807 13th Street, Suite 103, Sacramento CA 95814-7117

California Department of General
Services Use Only

☐ Exempt per:

EXHIBIT A
(Standard Agreement)

SCOPE OF WORK

This contract involves a cooperative project between the State and the City of San Francisco, acting by and through the Port of San Francisco (Port) to build a 115 foot connecting trestle-pier to attach the promenade to an existing 500 foot breakwater located just south of the Ferry Terminal in San Francisco Bay. The new pier will provide public access to Bay waters. The Port shall provide all labor, tools, equipment, materials, permits and taxes as necessary to construct a barrier-free fishing and public access pier in accordance with the plans and specifications prepared by or under the direct supervision of the Port as shown on Attachment 1. Said plans and specifications must be reviewed and approved by the State prior to construction.

Direct all inquiries to the Project Managers during the term of this agreement as follows:

Bonnie Turner
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento CA 95814
Phone: 916-445-1093
e-mail: bturner@dfg.ca.gov
Fax: 916-323-0280

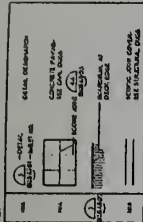
Dan Hodapp
Port of San Francisco
Pier 1
San Francisco CA 94111
Phone: 415-274-0625
Phone: 415-274-0625
e-mail: dan_hodapp@sfport.com
Fax: 415-544-1735

Attachment 1

Site Plan to be Provided by Port of San Francisco

LEGEND / SYMBOLS

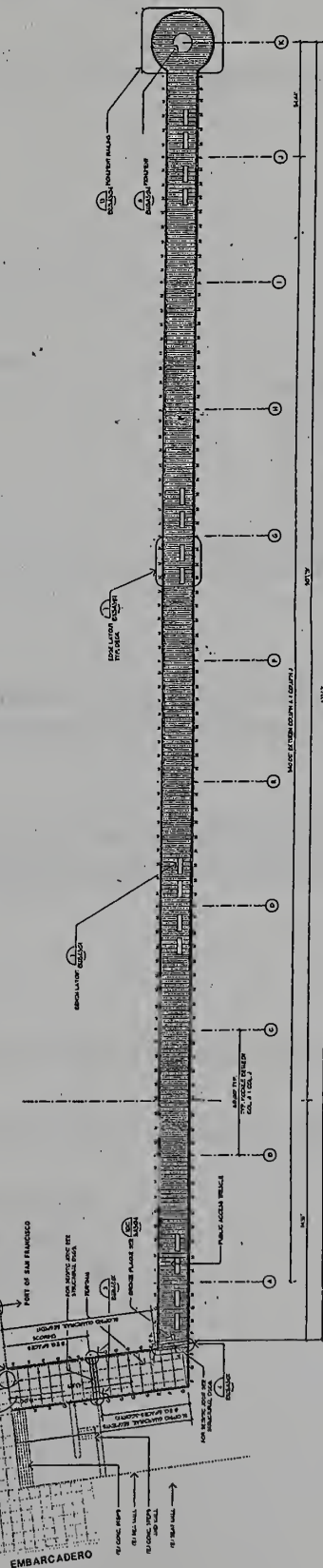
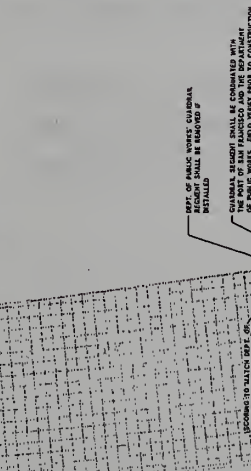
DETAIL SYMBOL DESCRIPTION



GUARDRAIL

ASSEMBLY	DESCRIPTION
1	WOOD
2	STEEL
3	CONCRETE
4	BRICK
5	STONE
6	MASONRY
7	PLASTER
8	PAINT
9	GLASS
10	METAL
11	WIRE
12	ROPE
13	NET
14	SCREEN
15	SLAT
16	RAIL
17	POST
18	BRACKET
19	ANCHOR
20	FASTENER
21	WELD
22	SPOT WELD
23	WELD BEAD
24	WELD RIB
25	WELD RING
26	WELD FLANGE
27	WELD GASKET
28	WELD GASKET
29	WELD GASKET
30	WELD GASKET

AGRICULTURAL BUILDING



NOT FOR CONSTRUCTION

1. BREAKWATER
1" = 32' (SEE LAYOUT NOTES FOR ADDITIONAL INFORMATION)

DOWNTOWN FERRY TERMINAL PORT OF SAN FRANCISCO

CONSULTANT
ROMA
ARCHITECTS
1015 Market Street, Suite 200
San Francisco, CA 94102
(415) 398-1000

SCALE/DATE

APPROVED BY
SAN FRANCISCO
PORT COMMISSION

REVISIONS
NO. DATE DESCRIPTION

DATE 08-20-02
DRAWN BY
CHECKED BY
AT
PRINCIPAL IN CHARGE
JOB NO. 1188.03

PLAN VIEW

SHEET NO.
BWSA101R

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING
SHEET TITLE
BREAKWATER PLAN
LAYOUT & SCORING PLAN

DRAWING NO.
SCALE 1" = 32'

LAYOUT NOTES

1. THE BREAKWATER IS SHOWN WITH THE BREAKWATER WALL, BREAKWATER PILE, BREAKWATER CAP, BREAKWATER BASE, BREAKWATER FOOTING, BREAKWATER FOUNDATION, BREAKWATER STRUCTURE, BREAKWATER SYSTEM, BREAKWATER DESIGN, BREAKWATER CONSTRUCTION, BREAKWATER MATERIALS, BREAKWATER COMPONENTS, BREAKWATER PARTS, BREAKWATER PIECES, BREAKWATER ELEMENTS, BREAKWATER FEATURES, BREAKWATER DETAILS, BREAKWATER SPECIFICATIONS, BREAKWATER STANDARDS, BREAKWATER CODES, BREAKWATER REGULATIONS, BREAKWATER REQUIREMENTS, BREAKWATER CONDITIONS, BREAKWATER SITUATIONS, BREAKWATER CIRCUMSTANCES, BREAKWATER ENVIRONMENTS, BREAKWATER CONTEXTS, BREAKWATER SETTINGS, BREAKWATER LOCATIONS, BREAKWATER POSITIONS, BREAKWATER ORIENTATIONS, BREAKWATER DIRECTIONS, BREAKWATER MOVEMENTS, BREAKWATER ACTIONS, BREAKWATER BEHAVIORS, BREAKWATER RESPONSES, BREAKWATER REACTIONS, BREAKWATER EFFECTS, BREAKWATER IMPACTS, BREAKWATER CONSEQUENCES, BREAKWATER RESULTS, BREAKWATER OUTCOMES, BREAKWATER ACHIEVEMENTS, BREAKWATER SUCCESSSES, BREAKWATER ACCOMPLISHMENTS, BREAKWATER MILESTONES, BREAKWATER LANDMARKS, BREAKWATER MONUMENTS, BREAKWATER MEMORIALS, BREAKWATER TRIBUTES, BREAKWATER DEDICATIONS, BREAKWATER INAUGURATIONS, BREAKWATER OPENINGS, BREAKWATER INAUGURATIONS, BREAKWATER OPENINGS, BREAKWATER INAUGURATIONS, BREAKWATER OPENINGS.
2. SEE STRUCTURAL DRAWINGS FOR GUARDRAIL LOCATIONS AT BREAKWATER EDGE.
3. SEE PLUMBING DRAWINGS FOR LOCATIONS OF WARE HOUSE.
4. SEE ELECTRICAL DRAWINGS FOR LOCATIONS OF WARE HOUSE.
5. SEE ELECTRICAL DRAWINGS FOR CONCRETE TOPPING AND REINFORCEMENT.
6. SEE ELECTRICAL DRAWINGS FOR SERVICE TO ALL LIGHT FIXTURES.
7. PROVIDE BREAKWATER GUY RIGGING COLOR SHALL BE ADDED TO THE BREAKWATER WALL.
8. PROVIDE BREAKWATER GUY RIGGING COLOR SHALL BE ADDED TO THE BREAKWATER WALL.
9. PROVIDE BREAKWATER GUY RIGGING COLOR SHALL BE ADDED TO THE BREAKWATER WALL.
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EXHIBIT B
(Standard Agreement)

BUDGET DETAIL AND PAYMENT PROVISIONS

Description	Estimated Cost
Trestle to Connect to Promenade	480,000
Railing and site furnishings	510,000
Electrical	65,000
Pier Turn-around	110,000
Construction Administration	116,500
Contingencies	162,500
TOTAL *	\$1,444,600
*Fund sources include: California Coastal Conservancy	\$400,000
Port Capital	300,000
ABAG Bay Trail	200,000
California State Resources Agency (CIAP)	105,000
City DPW Funds	50,000
California Transportation Commission-EEM	200,000
WCB	200,000
TOTAL FUNDS	\$1,455,000

Payment Provisions

1. In consideration for the satisfactory completion of the services described herein, the State agrees to pay the Contractor, in arrears, upon receipt of an invoice in triplicate, for services rendered under this Agreement.

Payment shall be contingent upon receipt of an invoice received and approved by the State's representative. The invoice must be submitted on Contractor's letterhead signed by authorized representative, and include:

- Agreement number
- Time period covered
- Work completed for the period (detailed statement of services)
- Sub-contractor services
- Whether the request is for partial payment or final payment

Submit invoices to: Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, California 95814

2. Progress payments are permitted for tasks completed under this contract. No more than one invoice may be submitted per month. The State may withhold ten percent (10%) of each payment until the State has approved the acceptance of the project.
3. For work accomplished or cost incurred in any other manner (salaries, wages, materials, taxes, permits, equipment rental, fuel, etc.), the request for payment should include invoices in triplicate itemized as to actual and direct expenditures.
4. Request for final payment shall be submitted to WCB's Project Manager within thirty (30) days after completion of the work authorized under this contract.
5. Work to be performed under this agreement is subject to availability of funds through the State's normal budget process.
6. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
7. The State's Project Manager has initial jurisdiction over each controversy arising under or in connection with the interpretation, performance, or payment under this contract. The Contractor will diligently pursue with the State's Project Manager mutually agreeable settlement of any such controversy. If the controversy cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Executive Director of the Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-28

- WHEREAS, the Wildlife Conservation Board of the State of California has a program of developing lands for public access to the wildlife resources of the State, and
- WHEREAS, the Wildlife Conservation Board ("WCB") has announced the availability of grant funds for the development of public access facilities and providing recreation primarily for hunting or fishing or other wildlife-associated recreation of statewide or regional significance; and
- WHEREAS, the Ferry Terminal Public Pier Project (the "Project") will provide public access improvements on the existing Ferry Terminal breakwater, support recreational fishing and other wildlife-associated recreation uses, and will include interpretive displays on the Bay's natural resources, and the Project therefore qualifies for funding under the WCB's Public Access Program; and
- WHEREAS, the Project is an important part of the Port's Waterfront Land Use Plan; and
- WHEREAS, all relevant agencies, including the Bay Conservation and Development Commission, the Regional Water Quality Control Board, and the Army Corps of Engineers, have issued permits for approval of the Project; and
- WHEREAS, the San Francisco Planning Department adopted and issued a Final Negative Declaration (the "Negative Declaration") pursuant to the California Environmental Quality Act on August 7, 1997 and the Federal Highway Administration issued a Finding of No Significant Impact pursuant to the National Environmental Policy Act for the Downtown Ferry Terminal Project, which incorporates the Project; and
- WHEREAS, the Port Commission previously reviewed the Negative Declaration and determined that there is no substantial evidence that the Project could have a significant effect on the environment; and
- WHEREAS, the WCB has determined that development of the Project will benefit the people of the City and County, and the State generally, by providing for recreational use of our wildlife resources; and
- WHEREAS, the WCB has established the procedures and criteria for awarding grant proposals and said procedures require the Port to execute an Operating Agreement and Standard Agreement as a condition of the WCB's Public Access Program funds for the Project; and

WHEREAS, the above mentioned Operating Agreement and Standard Agreement place certain limitations on the development, use, operation, and maintenance of the Public Pier on a cooperative basis with the State of California for a twenty-five (25) year term, which limitations are minor and generally consistent with the Port's intended use of the Project and the Waterfront Land Use Plan, and are further described in the staff memorandum for this Item; and

WHEREAS, the Port's Executive Director has executed the WCB's Operating Agreement and Standard Agreement to secure the Project grant funds as part of the WCB's current cycle of grant funding; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves and ratifies the Executive Director's execution of the WCB Operating Agreement and Standard Agreement, and hereby authorizes the execution of such further documents as are necessary, for the Port to accept and expend \$200,000 in grant funds from the WCB Public Access Program for the Project.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Authorization to enter into a contract with the consultant team led by Economics & Planning Systems, Inc. for an additional \$60,000 for further assistance negotiating the Disposition and Development Agreement and related transaction documents relating to the Bryant Street Mixed Use Project.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ENTER INTO CONTRACT WITH THE CONSULTANT TEAM LED BY ECONOMICS & PLANNING SYSTEMS, INC.

Background

On September 17, 1999, Port staff issued a Request for Qualifications ("RFQ") from teams of consultants with multidisciplinary expertise to provide consulting services for waterfront planning and development projects. On September 15, 2000, the Port issued a Request for Proposals ("RFP") to Economic and Planning Systems, Inc ("EPS") to assist the Port on an as-needed basis during its analysis of the Bryant Street Mixed Use Project, including the James R. Herman Cruise Terminal, on Pier 30-32 and Seawall Lot 330 (the "Project") as proposed by San Francisco Cruise Terminal LLC ("SFCT") and throughout the negotiation of the lease and development agreement.

On November 1, 2000, the Port Commission authorized staff to enter into a contract with a team led by EPS to provide consulting services for the Project. Prior to commencing work, a contract was established with an initial budget set at \$120,000. This initial authorization was based on a schedule which anticipated that the Project would be close to receiving approvals by the fall of 2001.

During this initial period, the EPS consultant team performed these tasks:

- Participated in a series of meetings with SFCT focused on a complete financial review of SFCT's assumptions regarding the development program and financial plan for the Project;

This Print Covers Calendar Item No. 5B

- Conducted market research to verify uses on the commercial uses of the Project;
- Created a financial model to track alternative project scenarios;
- Reviewed and evaluated SFCT's engineering and traffic assumptions;
- Reviewed and evaluated various financing alternatives, including the use of public financing;
- Drafted negotiating principles and term sheet table of contents.

The EPS team also worked closely with Port staff with regard with the development and operation of the cruise terminal component of the Project, including:

- Evaluate the design concept, especially in regard to the interaction of the cruise terminal and the commercial components;
- Reviewed and verified cruise business projections in light of industry trends;
- Evaluated the adequacy of SFCT's proposed infrastructure including utilities, baggage handling systems, vehicular and passenger handling and flow, intermodal connections, security, etc.;
- Analyzed the parking plan;
- Evaluated the use of the cruise terminal as an event space.

Through its due diligence, SFCT determined that the cost of seismically retrofitting the pier was significantly higher than originally anticipated. To offset this increased cost, SFCT proposed increasing the amount of office space and proposed residential condominiums as an alternative to the originally proposed hotel and time-share units. The EPS team then evaluated the financial effects if hotel and time-share uses were replaced by condominiums or apartments.

The overall Project was delayed by several months because of lengthy discussions with BCDC and the State Lands Commission ("SLC") staff regarding the project's public access and uses deemed to be consistent with the public trust and significant changes in the financial feasibility of the commercial uses. The year-long dialogue ensued with BCDC, SLC and the Attorney General's Office regarding whether general office space and local-serving retail (e.g., grocery, theater uses, and neighborhood-serving retail) could be found consistent with the trust as incidental to primary trust purposes of the cruise terminal. SLC staff informed the Port in August 2001 that the proposed use program would require action by the State Legislature.

During this period, the Port Commission on July 10, 2001 authorized an increase in the contract amount by \$120,000 to provide extended consultant services. EPS assisted the Port team by evaluating the various office, retail and residential space amounts to determine what would be feasible to support a cruise terminal operation. Through their assistance, legislation, known as AB 1389, was drafted and signed into law on October 4, 2001.

During the fall of 2001 and early 2002, EPS evaluated various development scenarios on Seawall Lot 330 and analyzed an array of public financing instruments that together would support a cruise terminal. Since early 2002, the EPS consultant team made has made considerable significant contributions leading to a Term Sheet agreement between Port staff and SFCT. EPS provided the financial and economic analysis for the Term Sheet and was a direct participant in the negotiation of the Term Sheet which was signed by the Port Director on June 25, 2002.

The Term Sheet was used as the basis for Port Commission approval to extend the term of the Exclusive Right to Negotiate on June 25, 2002. This Term Sheet will serve as the basis for negotiation of the Disposition and Development Agreement ("DDA"), Pier 30-32 Ground Lease, SWL 330 Purchase and Sale Agreement and related agreements. As a result of intensive effort in the last few months to complete the Term Sheet, the current EPS authorization is nearly exhausted.

Request to Increase Contract Authorization

It is anticipated that negotiation of the DDA and related documents may take three to six months and receiving approvals by the end of 2002. Additional funds are needed so that the EPS team can perform the following tasks:

- Verify the financial aspects and implications of the DDA and Ground Lease;
- Estimate Port revenue generated during the term of the lease;
- Review and evaluate schematic design, particularly in relation to the cruise terminal and its operations;
- Evaluate the parking plan;
- Review engineering assumptions in regard to the needed substructure work on Pier 30-32;
- Provide negotiation support for the DDA and related transaction documents.
- Provide analytical support at public hearings before the Port Commission and Board of Supervisors.

Prior funding of the EPS team was budgeted by the Port. However, as a condition to the Exclusive Right to Negotiate extension and pursuant to the Term Sheet, SFCT is required to pay the Port \$150,000 to pay for all reasonable costs associated with negotiation of the DDA and related transaction documents. These transaction costs will be applied to attorney and the consultant team led by EPS during the first 90 days of negotiation, and these costs will be subject to readjustment and replenishment if negotiations exceed 90 days. It is anticipated that only \$60,000 authorization will be needed to fund the work of the EPS team.

In summary, staff recommends that the Port Commission direct the Port Director to execute an amendment to the EPS contract amount by increasing funding by \$60,000 for a total contract amount of \$300,000.

Prepared by: John Doll
Development Project Coordinator

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-29

- WHEREAS, In June 1997, the Commission adopted Resolution 97-50 adopting findings pursuant to the California Environmental Quality Act, and adopting the Waterfront Land Use Plan, including the Waterfront Design & Access element; and
- WHEREAS, On May 25, 1999 the Port Commission adopted Resolution No 99-36 authorizing Port staff to issue a request for qualifications and proposals ("RFQ/P") for design and development of a first-class "James R. Herman International Cruise Terminal" and mixed-use development at Piers 30-32 and Seawall Lot 330 (together, the "Bryant Street Pier Project"); and
- WHEREAS, On June 4, 1999, the Port issued an RFQ/P to design and develop the Bryant Street Pier Project, and
- WHEREAS, On January 7, 2000 the Port Commission adopted Resolution 00-03, authorizing the Executive Director of the Port, or his designee, to execute an Exclusive Right to Negotiate agreement and incorporating the economic parameters outlined in the January 7, 2000 Memorandum for Agenda Item 8A for the January 11, 2000 Port Commission hearing, with the understanding that the final terms and conditions of the Lease and related documents negotiated between SFCT and Port staff during the Exclusive Negotiation Period will be subject to the approval of the Port Commission; and
- WHEREAS, Port staff on September 17, 1999 issued a request for qualifications from teams of consultants with multidisciplinary expertise to provide consulting services for waterfront planning and development projects, including Pier 45 Shed A ("Consultant RFQ"), and Port staff, with the assistance of representatives of the Human Rights Commission, undertook good faith efforts to ensure that disadvantaged minority and woman owned business enterprises were given an opportunity to submit a proposal or participate on a consultant team as a sub-consultant; and
- WHEREAS, Responses were received to this Consultant RFQ from six consultant teams, all of which were determined by Port staff to met the Minimum Qualifications indicated in the Consultant RFQ, and all six consultant teams were placed on the list of Qualified Consultant Teams from which the Port could solicit proposals for specific consulting contracts; and
- WHEREAS, Port staff on September 15, 2000 requested proposals from all two Qualified Consultant Teams to provide consultant services regarding the Project to assist the Port with negotiating the development agreement and lease for the project with the developer; and

WHEREAS, Responses to this Consultant RFP were received from two consultant teams, led by Bay Area Economics ("BAE"), and Economic and Planning Systems, Inc. ("EPS"); and

WHEREAS, On November 1, 2000, the Port Commission adopted Resolution No. 00-81 authorizing the Executive Director of the Port, or his designee, to enter into a contract with EPS for consulting services in an amount of \$120,000; and

WHEREAS, On July 10, 2001, the Port Commission adopted Resolution No.01-57 authorizing the Executive Director of the Port, or his designee, to enter into a contract amendment with EPS for consulting services which must now be modified to increase the contract amount by \$120,000 for a total amount of \$240,000;

WHEREAS, On June 25, 2002, the Port Director signed the non-binding Term Sheet between the Port and SFCT which is the basis for negotiation of the Disposition and Development Agreement and related agreements; therefore, now be it

RESOLVED, That the Port Commission hereby authorizes and directs the Executive Director of the Port, or his designee, to enter into a contract amendment with EPS for consultant services to increase the contract amount by \$60,000 for a total amount of \$300,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director *[Signature]*

SUBJECT: Informational Presentation on South Beach Park and Harbor Improvement Project

ACTION: No Action Required

Background

South Beach Harbor was constructed by the Redevelopment Agency ("Agency") in the mid-1980's, on property leased from the Port, as a catalyst for the redevelopment of the Rincon Point-South Beach Redevelopment Project Area. Construction of the 700-berth Harbor, along with the fishing pier and the first portion of South Beach Park, was funded through tax increment bond proceeds and a California Department of Boating and Waterways ("Cal Boating") loan. Over the next ten years, the Agency undertook additional improvements to South Beach Park, including a landscaped lawn area, a partial waterfront promenade and plaza, a landscaped boater parking area, and installation of a major public sculpture. Most recently, the South Beach Children's Play Area was completed in April 2002. Because of funding limitations and site constraints, however, many of the improvements, including the harbormasters' office, the waterfront promenade, and public access to the waterfront, were left in a temporary or incomplete state.

These public investments have been successful. The new South Beach neighborhood has grown up around the Park and Harbor, and the Harbor is among the most desirable on San Francisco Bay, with active community service programs that offer sailing programs for disabled and young sailors from every background. South Beach Harbor, South Beach Park and Pier 40 are the centers of activity in the neighborhood, particularly the excursions, restaurants, bicycle rentals, yacht club functions, racing events, and other activities that bring residents and visitors together.

This Print Covers Calendar Item No. 5C

In 1999, the Agency started planning work on the Park and Harbor Improvement Project, with the goals of expanding the park, improving public access to the waterfront, and providing permanent and appropriate upgrades to the Harbor facilities. In March 2000, the Agency Commission approved an amended application to Cal Boating for \$7.3 million in loan funds for the improvements, and the Cal Boating Commission approved the loan later that month. The Board of Supervisors approved the use of Project Area tax increment funds to repay that loan, and the use of additional tax allocation bond proceeds to help fund additional costs of the project. The total approved budget for the project is \$11.75 million. Setting aside \$1.75 million for architecture and engineering, and construction management, \$10 million is available for construction costs.

The Agency currently leases the South Beach property from the Port, and the staffs of the Agency and Port are working toward the eventual transfer of South Beach Harbor and Park to the Port. Port staff has indicated that completion of the Park and Harbor improvements would be a condition for such a transfer. Agency staff and its consulting team have been collaborating with the Port during the course of project planning to ensure that the development program meets the Port's requirements both as future operator, and as Burton Act trustee and permitting agency. The phased program of improvements described below represents the outcome of these discussions.

In July 2001, the Agency entered into a multi-disciplinary architecture and engineering contract with EDAW, an international urban design and landscape architecture firm headquartered in San Francisco, as lead consultant for the project. EDAW leads a team of sixteen sub-consultants which includes Tom Eliot Fisch, as building architects, and Moffatt & Nichol providing marine engineering services.

Agency staff and the consulting team have been working closely with the Rincon Point-South Beach Citizens Advisory Committee, community residents, boaters, and Harbor commercial tenants, through numerous presentations and meetings. The Citizens Advisory Committee has endorsed the program and schematic design plan.

The South Beach waterfront is subject to permitting by BCDC under a permit held jointly by the Port and the Redevelopment Agency. Staff and the consulting team have been meeting periodically with BCDC staff regarding the required permit changes and the proposed design of the improvements. The project has been presented twice to joint meetings of the BCDC Design Review Board and the Port's Waterfront Design Advisory Committee. The plan has been very positively received, with constructive suggestions for design refinements. Agency staff will prepare the formal permit amendment application in autumn, 2002.

Proposed Program of Improvements

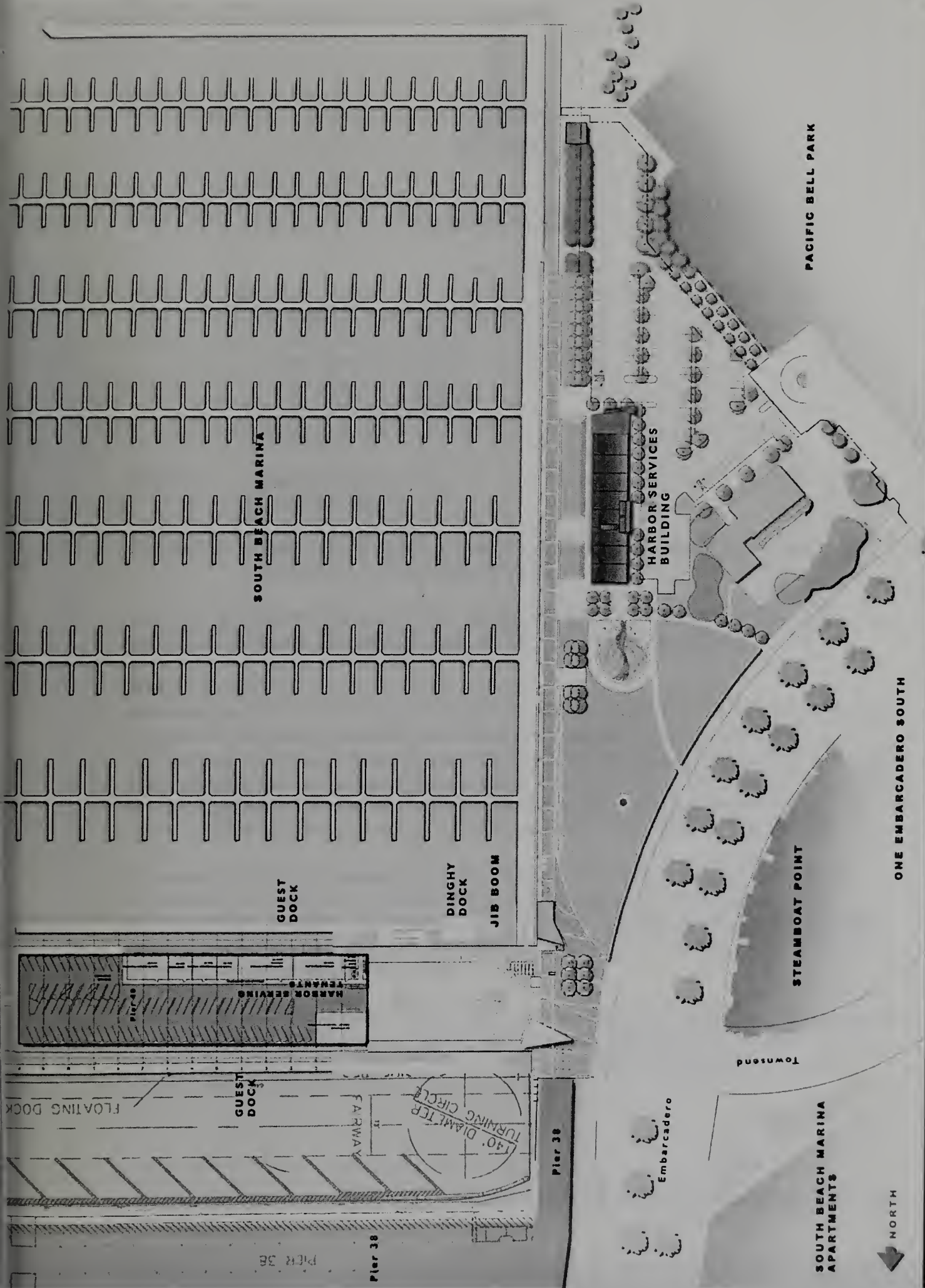
Based on the results of technical engineering studies and cost estimates, the community/stakeholder discussions, and the ongoing collaboration between Agency and Port staff, the Agency plans to undertake the overall South Beach Park and Harbor Improvement Project in two phases. Phase 1 will be funded from the current \$10 million construction budget and will include the following:

- ***Park and Public Access Improvements:*** completion of the harbor-side promenade in the area currently encumbered by the Sailing Ship Restaurant to complete public access along the waterfront; extension and reconfiguration of lawn and landscaping areas; and creation of two new public plaza/seating areas, on the south side of the Pier 40 apron, and adjacent to the new South Beach Children's Play Area. The structural under-deck areas of the uncovered portion of Pier 40 which will be improved for public access will be repaired and improved as part of this phase of work.
- ***Harbor Services Building:*** construction of a 12,600 square foot building near the Children's Play Area, which will include a community meeting room, public restrooms, non-profit work areas; the harbormaster's office and maintenance shop; boater showers; and rental space for the South Beach Yacht Club (currently located in a trailer on Pier 40).
- ***Harbor Improvements:*** construction of a guest/utility dock on the north side of Pier 40, which will provide added revenues to the Harbor and increase opportunities for public boating; construction of a dinghy dock for youth and disabled sailing programs; and installation of ramp riders and other disabled accessibility improvements to the Harbor.
- ***Pier 40 Shed Repairs:*** re-roofing; replacement of damaged windows; repair and repainting of the exterior walls to arrest deterioration.

Phase 2 work will include completion of the under-deck improvements and pile repairs to Pier 40, improvements for harbor-serving tenant spaces within the shed, and completion of public access boardwalk improvements around the entire pier. The latter is an important element for BCDC approval of the plan. Staff will continue to work with Port staff over the next few months to determine the exact scope and design for these improvements. The Agency will seek funding for the Phase 2 improvements (currently estimated at approximately \$4 million) in the Agency's FY 2003-2004 budget, from tax increment available in the Rincon Point-South Beach Project Area.

The Redevelopment Commission will consider the Schematic Design for the Phase 1 improvements, including the Harbor Services Building, in July 2002. Following approval, Agency staff and the consulting team will undertake design development and construction documentation. Contract bidding is anticipated for Spring, 2003 with a construction period of approximately 18 months.

Prepared by: John Doll
Development Project Coordinator



SOUTH BEACH PARK AND HARBOR IMPROVEMENTS

Schematic Site Plan



MEMORANDUM

July 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas F. Wong *DFW*
Executive Director

SUBJECT: Extension of Exclusive Negotiations for Embarcadero Hotel Project at
Broadway on Seawall Lots 323, 324 and 322-1

DIRECTOR'S RECOMMENDATION: APPROVE SHORT-TERM EXTENSION OF
EXCLUSIVE RIGHT TO NEGOTIATE WITH STANFORD HOSPITALITY, INC.

BACKGROUND

In November 1998, the Port issued a Request for Qualifications and Proposals ("RFQ/P") for the lease, development and operation of a first-class, full-service hotel on Seawall Lots 323, 324 and 322-1 and a City-owned parcel at the corner of Broadway and The Embarcadero (See Exhibit A attached hereto). Three respondents submitted qualifications. In March 1999 the Port Commission invited two respondents to submit proposals for the hotel by May 18, 1999. Stanford Hospitality, Inc. ("Stanford") was the only respondent to submit a proposal.

On August 10, 1999, by Resolution No. 99-62, the Port Commission authorized Exclusive Negotiations with Stanford. On November 8, 1999 Stanford and the Port executed an Exclusive Right to Negotiate agreement ("ERN") for the initial period of November 8, 1999 to May 7, 2000, with two six-month extension options. Stanford exercised the two options, extending the agreement to May 7, 2001.

On April 12, 2001, by Resolution No. 01-29, the Port Commission authorized an extension of the ERN agreement to November 7, 2001. On October 23, 2001, by Resolution No. 01-80, the Port Commission authorized a further extension of the ERN, and the agreement will expire on July 31, 2002.

THIS PRINT COVERS CALENDAR ITEM NO. 5D

Stanford has paid the following negotiating fees: \$100,000 for the initial period, \$50,000 for the first extension, and \$25,000 for the second extension.

CURRENT STATUS OF THE HOTEL PROJECT

Stanford has developed several schematic design plans and undertaken numerous revisions of these plans in response to community concerns and comments by the Northeast Waterfront Advisory Group and the Waterfront Design Advisory Committee. Stanford now proposes to construct a smaller hotel on the front parcel only (Seawall Lot 324), within the 65' height limit. The back parcel (Seawall Lot 322-1) would have a parking garage (size still to be determined) and may also include hotel-related uses (still to be determined). The City-owned parcel would provide a drive entrance into the parking garage, administrative offices, and other hotel functions located on the back parcel. The hotel would be of 4+ star quality and contain approximately 250 guest rooms, meeting space, one restaurant, a lobby lounge, spa, health club, business center and some retail shops.

Stanford only recently submitted to the Port its above new proposed concept. Stanford needs to further refine the design and programming concept and submit more detailed information concerning the financial terms of the proposal. Because staff will not have an adequate opportunity prior to the July 31st ERN expiration date to fully analyze the new proposal when fully presented, additional time is needed. Based on staff's preliminary review, Stanford's new proposal offers many advantages, including its reduced size and height; elimination of the pedestrian bridge across Davis Street; more efficient operation of the hotel; provision for extra visitor parking; and elimination of one loading dock. However, staff needs additional time to discuss and negotiate key aspects of the proposal with Stanford before it can provide to the Commission a thorough analysis and, if warranted, a recommendation for a longer-term ERN extension.

STAFF RECOMMENDATION

Port staff requests that the Port Commission grant Stanford a short extension of its ERN for 45 days, to September 14, 2002, to enable Stanford to further refine its proposal and allow staff an opportunity to analyze the proposal and negotiate a term sheet, design concept, and schedule of performance. Staff recommends that the short-term extension be subject to the following conditions and benchmarks:

1. By August 1, 2002, Stanford must pay a Negotiation Fee of \$25,000, which fee is non-refundable and not applicable to future rent. The fee is intended to cover the Port's present and future costs associated with staff and consultant time needed in conjunction with the hotel project. The Port's receipt of this fee is a prerequisite to further staff work on the project;
2. By August 1, 2002, Stanford must submit its tentative detailed proposal to the Port which includes (a) design concept, (b) programming, (c) financial terms, (d) expanded team members (see Condition #3 below), and (e) schedule;

3. By August 1, 2002, Stanford must evidence an expansion of its development team with members who are experienced and have a track record for developing properties in a complicated entitlement environment;
4. On August 7, 2002, Stanford must make an informational presentation to the NEWAG;
5. By August 23, 2002, Port staff and Stanford must negotiate and agree upon a proposed term sheet for a new proposal encompassing the smaller hotel (with no housing component);
6. By August 23, 2002, Stanford must submit to Port staff a final detailed proposal for the smaller hotel, reflecting Conditions #3 and #5 above as well as other negotiations with Port staff.

Whether staff will recommend a long term ERN extension after the expiration of the proposed 45-day extension is contingent upon various factors, including Stanford's diligent satisfaction of the above conditions as well as the initial reactions of staff and the Commission to the final proposal submitted by Stanford. Should staff recommend a long-term extension, it will be subject to various conditions, particularly in light of the long delay on this project (nearly three years since the project rights were first awarded to Stanford). At a minimum, the conditions would include that Stanford pay significant monthly negotiation fees to the Port during the term of the extended ERN and that the Port have the right to terminate the ERN without notice upon Stanford's failure to timely meet any significant benchmarks set forth in the extended ERN.

Prepared by: Jennifer Sobol
Development Project Coordinator

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-30

- WHEREAS, Charter, Section B3.581 grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Under Charter Section B3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, The Port owns certain properties known as Seawall Lots 323, 324 and 322-1; and
- WHEREAS, In November 1998, the Port issued a Request for Qualifications and Proposals for the lease, development and operation of a full-service, first-class hotel on these Seawall Lots; and
- WHEREAS, Stanford Hospitality, Inc. submitted a response to the RFQ/P on May 18, 1999 which complied with the submittal requirements stated in the RFQ/P; and
- WHEREAS, Based on staff's and its own review, the Port Commission authorized the Executive Director to enter into exclusive negotiations with Stanford Hospitality, Inc. on August 10, 1999 (Resolution No. 99-62); and
- WHEREAS, The Port and Stanford Hospitality, Inc. executed an Exclusive Right to Negotiate agreement ("ERN") on November 8, 1999 for a period of six months, with two six-month extension options; and
- WHEREAS, Stanford Hospitality, Inc. exercised both extension option periods extending the ERN to May 7, 2001; and
- WHEREAS, The Port Commission subsequently authorized two further extensions of the ERN (Resolution Nos. 01-29 and 01-80), pursuant to which authorizations the ERN expires on July 31, 2002; and
- WHEREAS, Stanford Hospitality, Inc. has recently submitted to the Port a new proposed concept for a smaller hotel; and
- WHEREAS, Stanford needs to refine this concept and submit a more detailed and final proposal. Port staff needs more time to analyze such new proposal and negotiate a new term sheet, design, and schedule of performance for the new proposal encompassing the smaller hotel concept; and now therefore, be it

RESOLVED, That the Port Commission hereby authorizes the Executive Director of the Port to extend the ERN for an additional 45 days, to September 14, 2002, subject to the conditions recommended by staff in its Memorandum to the Port Commission dated July 2, 2002 for Item No. 5D, by way of a Third Amendment to the ERN that is in a form approved by the City Attorney's Office; be it further

RESOLVED, That the Port Commission makes no representation and gives no assurance that the new proposal submitted by Stanford and to be further negotiated with Port staff will be ultimately accepted or approved by the Port Commission; and, be it further

RESOLVED, That the Port will not enter into a final lease that would allow for the development of the project until there has been complete compliance with the California Environmental Quality Act (CEQA).

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2002.

Secretary



MEMORANDUM

July 9, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Request for Adoption of CEQA Findings and for Approval to Lease a Portion of Pier 45 Shed A to San Francisco Museum and Historical Society and Its Proposed Sublessee, Musee Mecanique, for Short-Term Use.

DIRECTOR'S RECOMMENDATION: (1) Adopt CEQA Findings for Proposed Short-Term Use of Pier 45 Shed A by the San Francisco Museum and Historical Society and Its Proposed Sub-Lessee, Musee Mecanique and (2) Authorize the Executive Director to Negotiate and Execute a Lease with Said Tenant in a Form Consistent with Terms Outlined in this Staff Report and Resolution No. 02-31.

BACKGROUND

On June 3, 2002, the San Francisco Board of Supervisors adopted a Resolution "urging the Port of San Francisco to sign an agreement with The San Francisco Museum and Historical Society for the interim use of a portion of Shed A at Pier 45 until a long term tenant is prepared to occupy the space." This resolution also included a recommendation for the temporary placement of the Musee Mecanique within the San Francisco Museum space. In addition, at its Special Meeting on June 13, 2002, the Fisherman's Wharf Waterfront Advisory Group unanimously approved a motion supporting use by the San Francisco Museum and Historical Society and the Musee Mecanique of a portion of Pier 45 Shed A for a period of 2 ½ years. Both museums are in need of temporary exhibit space for 2 ½ to 3 years.

The San Francisco Historical Society recently merged with The Museum of the City of San Francisco to become the San Francisco Museum and Historical Society, a California

This Print Covers Calendar Item No. 6A

non-profit organization ("S.F. Museum"). The San Francisco Historical Society was originally organized in 1988 with a mission "to preserve, interpret, present and disseminate historical data, information, and knowledge relating to the City and County of San Francisco so as to enhance the experience of living in or visiting San Francisco." The Museum of the City of San Francisco opened in 1991 and is a repository for original materials about early California history and the history of the City of San Francisco and its surrounding area, such as the Golden Gate Park, San Francisco earthquakes, the California Gold Rush, World War II events, and construction of the Golden Gate and Bay Bridges. The S.F. Museum has historically welcomed tens of thousands of visitors from around the world, and its website is visited an average of 6,000 times per day by patrons from around the world.

The S.F. Museum currently has no permanent space, though it does utilize a small amount of exhibit space in San Francisco's City Hall. Due to space constraints at City Hall and the S.F. Museum's need for a greater amount of exhibit space to display its collection, the S.F. Museum has selected Pier 45 Shed A for temporary use while it goes through the process of securing a permanent facility. This process is expected to take approximately 2 ½ to 3 years. The Museum is currently in the process of applying to restore the Old Mint at 5th and Mission for use as the S.F. Museum's permanent home.

Musee Mecanique, S.F. Museum's proposed sub-lessee, contains one of the largest privately owned collections of antique "arcadia", coin-automatic mechanical machines and musical instruments in the world, dating from the late 19th century. It has been housed at the Cliff House for over 35 years and is visited by approximately 100,000 patrons every year. However, the Musee Mecanique must relocate and find a temporary home for approximately 2 to 3 years due to the pending renovation of the Cliff House, which will commence this fall. For this reason, S.F. Museum proposes to sublease a portion of its temporary space at Pier 45 Shed A to Musee Mecanique.

PROPOSED USE AND LEASE TERMS

The S.F. Museum proposes to occupy approximately 9,406 s.f. of shed space on the southeast side of Shed 45A for museum, exhibits and special events and 329 s.f. of existing office space on the southwest side of Shed 45A for administrative office use. The proposed premises are shown on Exhibit A.

As explained above, Musee Mecanique also seeks a temporary home at Pier 45 Shed A. Port staff contemplates that a proposed lease to the S.F. Museum would give the tenant the right to sublease up to 6,000 s.f. to the Musee Mecanique (or other acceptable sublessees), subject to the Port's further reasonable consent. Any sublessee would be subject to all of the terms of the master lease, including the same percentage rent obligations imposed upon the S.F. Museum.

Admission to the S.F. Museum will be \$3.00 per person. In addition to exhibit space, the S. F. Museum will host special events and have a gift shop for visitors. The Musee Mecanique, which will be located within the Museum space, will be free to the public. Its arcade machines and games, however, will require payment for play.

Other key terms of the proposed use and lease with the S.F. Museum are as outlined below:

Lease Term: 30 months, projected to commence September 1, 2002, subject to completion of construction obligations (discussed below) and procurement of all permits and approvals, including a BCDC permit.

Monthly
Base Rent: \$3,000 per month, commencing March 1, 2003

Percentage
Rent: Payment to commence October 15, 2002 and the 15th of every month thereafter, based on gross revenues generated in the immediately preceding calendar month, per the following schedule:

- 6% of gross revenues from admission ticket sales;
- 9% of gross revenues from gift shop sales;
- 6% of gross revenues from all special events conducted on the Premises; and
- 6% of gross revenues from amusement devices (for Musee Mecanique), but increased to 10% for any gross revenues exceeding \$250,000.

Security
Deposit Equal to two (2) months base rent (\$6,000)

Construction:
Obligations: The S.F. Museum shall design and build a non-load bearing fire-rated demising wall separating the museum space from the balance of space in Shed Pier 45 A. This wall will include the portion of the wall which will separate the proposed Golden Gate Steamship Corporation (Red and White Fleet) ticket and administrative office space at the "point" of Pier 45A. The Taylor Street frontage roll up door shall be converted to a glass door for entrance to the S.F. Museum. One of the roll up doors on the east apron will also be converted to a glass door entrance and the others to large glass windows, creating an open view from the Taylor entrance east to the Bay as well as from the interior of the space. All tenant improvements and utility construction will be constructed by the S.F. Museum at its sole cost, except as noted otherwise below, and remain a part of Port property upon lease expiration. The structural additions or alterations will meet Secretary of Interior Standards for Rehabilitation of Historic Resources.

Rent
Credits: The S. F. Museum shall receive rent credits for full reimbursement of the cost to build the non-load bearing fire-rated demising wall that will separate the proposed Red and White Fleet Ticket Office space at the point of Pier 45 A. Rent credits will be applied at the rate of 100% of the base rental rate until the rent credit has been fully amortized.

Common
Area Use: S.F. Museum shall have the non-exclusive use of the east apron of Pier 45 Shed A for access/egress and for the detached restrooms located within the Pier Shed.

S.F. Museum will share the cost and expense of supplies, cleaning and maintaining the restrooms on an equal share basis with existing and future Pier 45 tenants.

Permits: S.F. Museum will be responsible for obtaining any and all required permits and approvals from all regulatory agencies, including BCDC and Port building permits.

Access: Access to the S.F. Museum shall be through the east roll up door at the Shed 45A frontage facing Taylor Street, as well as from the east apron.

Other: An existing Port tenant, the San Francisco Maritime Park Association ("Pampanito"), proposes to expand its demised premises into a portion of the space sought by the S.F. Museum, as shown on Exhibit A-1. As such, any lease to the S.F. Museum would require this tenant to relinquish a portion of its demised premises to accommodate the Pampanito's potential expansion.

ANALYSIS OF PROPOSED USE AND LEASE

The proposed short-term use will have positive financial effects on Port revenue as well as other tenants of Fisherman's Wharf. The S.F. Museum and the Musee Mecanique together expect 150,000 visitors on an annual basis. Exhibits highlighting Fisherman's Wharf, the Port, and San Francisco will occupy a significant portion of the permanent exhibit for the S.F. Museum at Pier 45 Shed A. In addition, there will be other exciting fee-based attractions which will change from time to time to keep the public's interest, with subjects such as the San Francisco earthquake and the building of the Golden Gate and Bay Bridges. Based on gross income projections for the two museums, the proposed lease (and sublease) will provide approximately \$60,000 per year in the form of percentage rent to the Port. Moreover, the visitor activity generated by these attractions at Pier 45 is expected to have a significantly positive ripple effect on all other businesses located throughout Fisherman's Wharf.

The proposed lease with the S.F. Museum will also provide non-economic benefits to the Port and the Fisherman's Wharf community. By its nature, the two museums will provide an additional tourist activity for visitors of San Francisco by serving as a repository about San Francisco and its history, including its maritime roots. These uses are expected to attract a significant number of additional visitors to Fisherman's Wharf. In addition to increasing revenues, the increased visitor activity will enliven Pier 45 and Fisherman's Wharf.

The proposed use is not expected to adversely affect the Port's other development plans for Pier 45 Shed A or its existing tenants at Pier 45. Red & White Fleet, who currently leases 4,884 s.f. in Pier 45 Shed C, is expected to relocate to Shed A in the near future. However, they propose to occupy a different portion of Pier 45 Shed A (the "point" adjacent to the S.F. Museum space) than the location proposed by S.F. Museum and are expected to benefit from the increased visitor activity.

As noted above, the Port staff anticipates that the San Francisco Maritime Park Association will expand their current premises for the Pampanito museum and gift shop in Shed A during the time that the S.F. Museum is in occupancy. While this expansion may include a portion of the

proposed S.F. Museum premises, any lease with S.F. Museum would include a requirement that the S.F. Museum relinquish a small portion of their demised premises as shown on Exhibit A-1.

The Fisherman's Wharf community supports the proposed interim use of Pier Shed A. As noted above, the Fisherman's Wharf Waterfront Advisory Group unanimously approved, at its Special Meeting on June 13, 2002, a motion supporting the proposed use.

ENVIRONMENTAL REVIEW

On December 12, 1996, the San Francisco Planning Department certified a Final Environmental Impact Report for the Hyde Street Harbor ("Hyde Street FEIR") and new uses in Pier 45 Sheds A and C, pursuant to the California Environmental Quality Act ("CEQA"). The original development program assumed for Shed A was for 40,000 s.f. of retail space, consisting of a mix of activities including gallery and workshop space for local artists, a theatre, bookstore, and a coffee bar and market hall for food, seafood, fishing tackle repairs and recreational uses. In addition, 100 parking spaces were assumed in Shed A in the Hyde Street FEIR analysis and the continuation of the S.F. Maritime Park Association's Pampanito exhibit. The Hyde Street FEIR found that, with specified mitigation measures, the uses proposed for Shed A would have no significant adverse environmental effects. The Shed A uses analyzed in the Hyde Street FEIR would be almost four times the amount of space now proposed for lease to the S.F. Museum. Therefore, the scope of Hyde Street FEIR covers the environmental effects of the S.F. Museum and Musee Mecanique uses, which would be smaller than those generated by the uses analyzed in the Hyde Street FEIR. Applicable mitigation measures are included as part of the proposed lease.

In addition to the Hyde Street FEIR, the environmental effects of Pier 45 Shed A uses were analyzed in the Waterfront Land Use Plan Final EIR ("WLUP FEIR"), certified January 9, 1997. Like the Hyde Street FEIR, the WLUP FEIR assumed the same visitor center based development program in the analysis of impacts; therefore, the conservative impact analysis in the WLUP FEIR also adequately covers the lesser environmental impacts that would be generated by the proposed lease.

Pursuant to CEQA, the Commission must adopt CEQA findings regarding the relevant environmental impact information from both of the FEIRs prior to taking an action on the Pier 45 Shed A lease with the S.F. Museum. The CEQA findings present in more detail the scope and analysis conclusions of both the Hyde Street and WLUP FEIR's, including the following issues: (1) Mitigation Measures; and (2) Unavoidable significant effects on the environment. The CEQA findings are attached as Exhibit B to this staff report and Port Commission Resolution 02-31. In addition, the findings are accompanied by a list of the required mitigation measures for the proposed lease (Exhibit B-1) as well as an associated mitigation monitoring program which lays out how they will be implemented (Exhibit B-2).

The Port Commission may rely on the WLUP FEIR and the Hyde Street FEIR when approving Resolution 02-31 because there are no changes to the "Project" analyzed in those environmental documents that would generate significant impacts, and there are no new circumstances under which the proposed use is being undertaken that would result in new or more significant adverse impacts than those already analyzed.

RECOMMENDATIONS

Port staff therefore recommends that the Port Commission take the following action:

- Adopt the CEQA findings as shown in the attached Exhibit B.
- Authorize the Executive Director to negotiate and execute a lease with the S.F. Museum and its proposed sublessee, the Musee Mecanique, in a form consistent with the terms and conditions outlined in this Staff Report and the attached Resolution No. 02-31.

Prepared by: Carol S. Anderson, Assistant Deputy Director

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-31

- WHEREAS, Charter Section B.3581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within the Port jurisdiction; and
- WHEREAS, On June 24, 1997 (by Resolution No. 97-50), the Port Commission adopted the Waterfront Land Use Plan, in which museums are listed as an acceptable long-term and interim use for Pier 45 Shed A; and
- WHEREAS, On June 3, 2002, the San Francisco Board of Supervisors approved a Resolution urging the Port of San Francisco to sign an agreement with The San Francisco Museum and Historical Society ("S.F. Museum") for the interim use of a portion of Shed A at Pier 45 until a long-term tenant is prepared to occupy the space; and
- WHEREAS, S.F. Museum is the result of a recent merger between the San Francisco Historical Society and the Museum of the City San Francisco. The two museums preserve and disseminate historical data, information and materials about the history of the City of San Francisco and its surrounding area and historically have welcomed tens of thousands of visitors from around the world; and
- WHEREAS, The S.F. Museum currently has no permanent space, though it does utilize exhibit space in San Francisco's City Hall. Due to space constraints at City Hall and the need for larger exhibit space, the S.F. Museum is proposing to find a temporary home at Pier 45 Shed A (the "Proposed Lease") while it goes through the process of acquiring a permanent home, which process is expected to take approximately 2-½ to 3 years; and
- WHEREAS, As part of the Proposed Lease, the S.F. Museum seeks to sublease a portion of its demised premises at Pier 45 Shed A to Musee Mecanique. Musee Mecanique houses one of the largest privately owned collections of antique "arcadia," coin-automatic mechanical machines and musical instruments in the world, dating from the late 19th century. It has been housed at the Cliff House for over 35 years and is visited by approximately 100,000 visitors every year. Due to the pending renovation of the Cliff House, which will commence this fall, the Musee Mecanique must relocate and find a temporary home for approximately 2 to 3 years; and
- WHEREAS, The Proposed Lease has received approval from the Fisherman's Wharf Waterfront Advisory Group; and

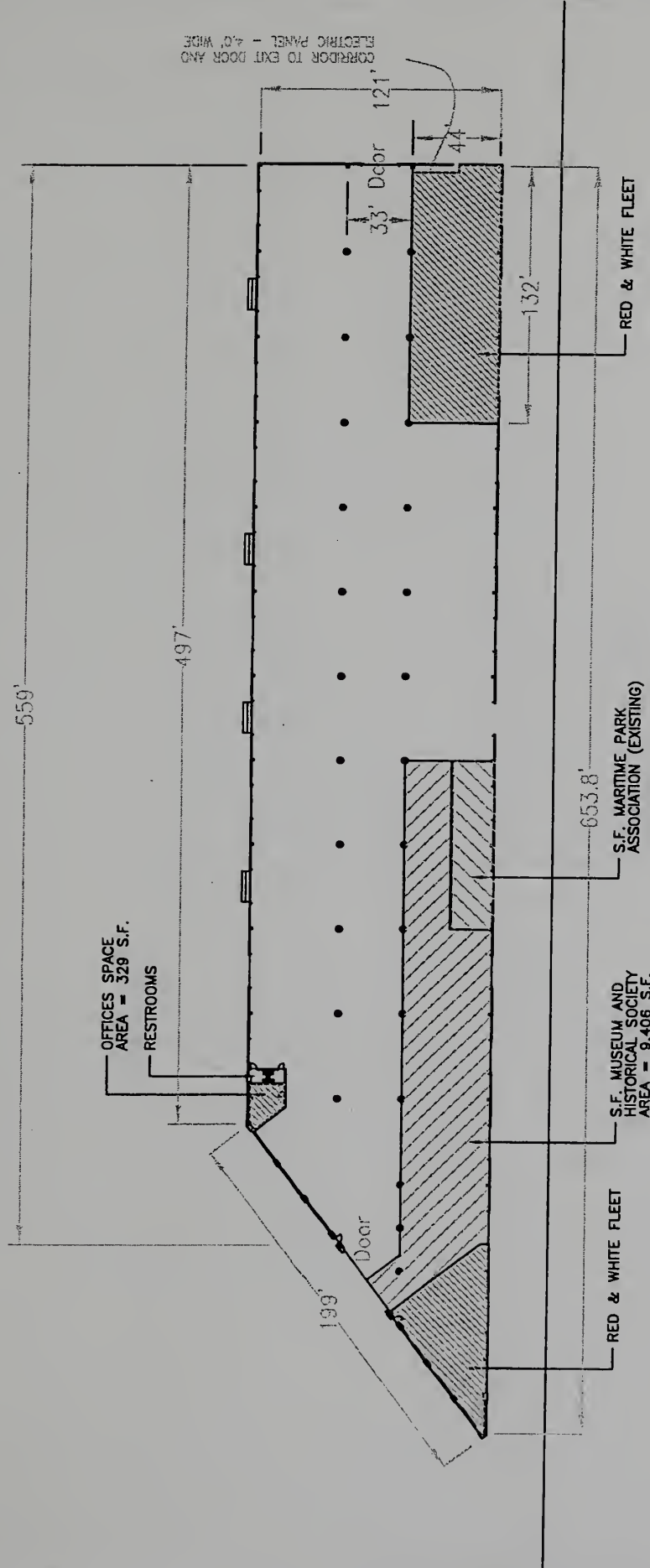
- WHEREAS, The City and County of San Francisco, acting through the Department of City Planning, prepared a Final Environmental Impact Report for the Hyde Street Fishing Harbor/Pier 45 Sheds A & C, File No. 93.574E, ("Hyde Street FEIR") consisting of a Draft EIR dated April 25, 1996, any consultations and comments received during the review process, any additional information that became available, and a Summary of Comments and Responses dated November 26, 1996; and
- WHEREAS, The San Francisco Planning Commission certified the Hyde Street FEIR on December 12, 1996, which analyzed the environmental effects of a development program in Pier 45 Shed A which included 40,000 s.f. of retail, assembly and recreational uses, continuation of the Pampanito exhibit, and 100 parking spaces; and
- WHEREAS, New uses in the Fisherman's Wharf area, including Pier 45 were also analyzed in the Waterfront Land Use Plan Final Environmental Impact Report ("Waterfront Plan FEIR"), File No. 94.155E, certified by the San Francisco Planning Commission on January 9, 1997, which included substantial increases in retail, assembly and entertainment, and recreation uses; and
- WHEREAS, The scale and intensity of museum, retail and special event uses proposed in the S.F. Museum and Musee Mecanique lease are substantially lower than the mix of retail, assembly and recreation uses analyzed in the Hyde Street FEIR and Waterfront Plan FEIR and would not result in new or different significant adverse environmental impacts than those addressed and disclosed in the two FEIRs; and, therefore, be it
- RESOLVED, That the Port Commission has reviewed and considered the information in the Hyde Street FEIR and the WLUP FEIR and the draft Findings contained in Exhibit B, which include applicable mitigation measures from the Hyde Street FEIR (Exhibit B-1) that will be implemented as part of the Proposed Lease as well as a Mitigation Measure Monitoring Program (Exhibit B-2); and, be it further
- RESOLVED, That under CEQA Guidelines Section 15162, no new information of substantial importance has become available, no modification to the project has occurred that would require important revisions to either of the FEIRs and no substantial changes have occurred with respect to the circumstances under which the project is undertaken, since the Planning Commission certified the FEIRs; therefore, there is no need to prepare an addendum or supplement to the FEIRs or recirculate the FEIRs; and, be it further

RESOLVED, That the Port Commission hereby finds that the Proposed Lease is within the scope of the "Project" analyzed in the Hyde Street and Waterfront Plan FEIRs; and, be it further

RESOLVED, That the Port Commission hereby approves the Proposed Lease of a portion of Pier 45 Shed A to the S.F. Museum and its proposed sublessee, Musee Mecanique, on the terms and conditions set forth in the staff report and authorizes the Executive Director, or his designee, to negotiate and execute a final lease with said tenant in a form consistent with this resolution and as approved by the Office of the City Attorney.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of July 9, 2002.

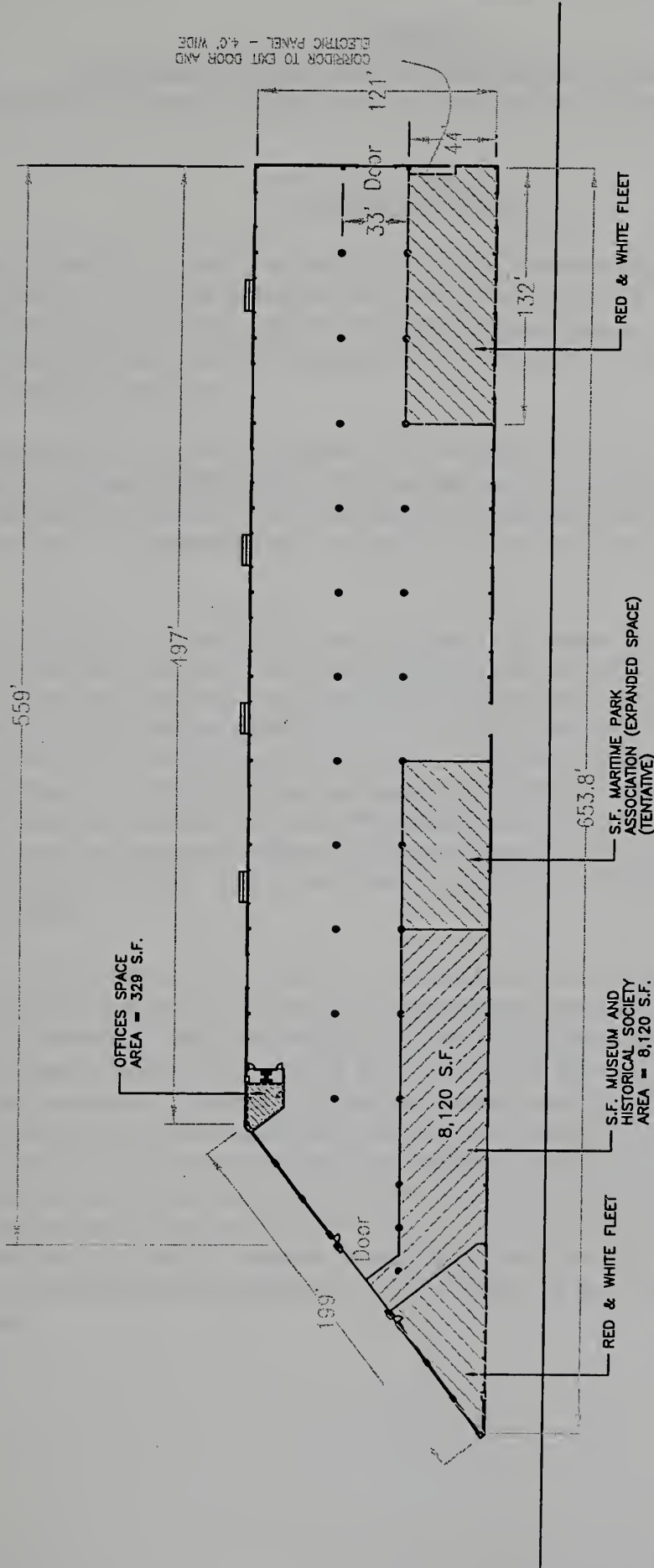
Secretary



PIER 45 - SHED A

EXHIBIT A

L-13313	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	SHED SPACE AREA BEING LEASED BY THE S.F. MUSEUM AND HISTORICAL SOCIETY	DRAWN BY: S. CHU CHECKED BY: DRAWING NO. 1450-A-0000 DATE: JULY 2, 2002 SHEET NO. OF
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PIER 45 - SHED A

EXHIBIT A-1

L-13313	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	DEFINITION OF RELINQUISHED SHED SPACE TO S.F. MARITIME PARK ASSOCIATION	DRAWN BY: S. CHU	DATE: JULY 2, 2002
			CHECKED BY: DRAWING NO. 1450-A-0000	SHEET NO. OF SHEETS

EXHIBIT B
FINDINGS OF THE PORT COMMISSION AFFIRMING
PIER 45 SHED A LEASE: SAN FRANCISCO MUSEUM & HISTORICAL SOCIETY

I. INTRODUCTION

The following findings are hereby adopted by the Port Commission pursuant to the requirements of the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq., (CEQA), the Guidelines for Implementation of CEQA, 15 Cal. Administrative Code Sections 15000 et seq., (CEQA Guidelines) and Chapter 31 of the San Francisco Administrative Code.

These findings are adopted, and incorporated by reference, in the Port Commission Resolution 02-31, dated July 9, 2002, authorizing the Executive Director, or his designee, to negotiate and enter into a lease for Pier 45, Shed A with the San Francisco Museum and Historical Society as described in the Commission staff report for this item and herein (the "Project").

These findings are based on the Port of San Francisco Hyde Street Fishing Harbor/ Pier 45 Sheds A & C Final Environmental Impact Report (Hyde Street FEIR), certified December 12, 1996, and Port of San Francisco Waterfront Land Use Plan Final Environmental Impact Report (WLUP FEIR), certified January 9, 1997. The Hyde Street FEIR provides site specific analyses of the Hyde Street Fishing Harbor, and a mix of uses in Pier 45 Sheds A & C. In Shed A, the Hyde Street FEIR analyzes the impacts of 40,000 sq. ft. of retail activities, including food and recreational uses, and 100 parking spaces. The WLUP FEIR is a program EIR that analyzes the cumulative effects of activities along the Port's entire 7-1/2 mile waterfront, including fishing industry, and retail uses at Pier 45. The findings contain the following sections:

Article II is the Description of the Record. **Article III** describes the proposed improvements for Pier 45, Shed A and how they relate to the uses analyzed in the Hyde Street FEIR and WLUP FEIR. **Article IV** sets forth findings as to the disposition of each of the applicable mitigation measures identified in the Hyde Street and WLUP FEIRs. Exhibit B-1, attached to these findings, contains the full text of the mitigation measures that will be implemented as part of Port Commission authorization for a lease at Pier 45 Shed A. Exhibit B-2 contains the Mitigation Monitoring and Reporting Program. **Article V** of this document addresses the FEIR alternatives and the reasons for the Commission's rejection of those alternatives in the context of authorizing the proposed lease in a portion of Pier 45 Shed A to the San Francisco Museum and Historical Society. **Article VI** addresses significant adverse environmental impacts, of which the Hyde Street FEIR has concluded that the uses analyzed therein would generate none.

II. DESCRIPTION OF THE RECORD

A. Location and Custodian of Record

The public hearing transcripts, a copy of all letters received during the public review period, the administrative record, and background documentation of both of the FEIRs are located at the Planning Department, 1660 Mission Street, San Francisco. The Planning Department is the custodian of record.

Findings are based on substantial evidence contained in the record before the Port Commission. For ease and clarity of reading, specific citations to information in the record upon which each finding is based may have been omitted. In all instances, however, these findings are based on the information contained in the FEIRs, as supplemented with information provided by the applicant, consultants, and interested parties, and reasonable inferences drawn from such information, identified below. All of this information has been and will continue to be available for public review at the offices of the San Francisco Planning Department and/or the Port of San Francisco.

For purposes of CEQA and these findings, the record before this Commission includes, without limitation, the following:

- 1) The Waterfront Land Use Plan Final EIR, and associated CEQA Findings adopted by the Port Commission in June 1997;
- 2) The Hyde Street Fishing Harbor/Pier 45 Sheds A & C Final EIR;
- 3) All meeting agendas, minutes and reports to the Fisherman's Wharf Waterfront Advisory Committee, Port Commission, or other Boards and Commissions attachments, references and material kept in the ordinary course of business associated with the public discussion of proposed uses in Pier 45 Shed A;
- 4) All relevant staff, and public reports and memoranda kept in the ordinary course of business providing substantial evidence to support these findings, including attachments, appendices and references kept in the ordinary course of business;
- 5) All public notices, including but not limited to notices of preparation and completion issued for the Hyde Street Fishing Harbor and Pier 45 project, and notices of public meetings.

III. DESCRIPTION OF PIER 45 SHED A PROJECT

A. Project Description

The Project would involve a lease for 30 months for 9,735 sq.ft. of space in Pier 45 Shed A for exhibit space, administrative offices, museum gift shop of the San Francisco Museum and Historical Society, and Musee Mecanique. The San Francisco Museum will provide exhibits

about early California and San Francisco history. The Musee Mecanique would move its collection of antique arcade mechanical machines and musical instruments from its current location at San Francisco's Cliff House to Fisherman's Wharf, and would be able to sublease up to 6,000 sq. ft. of space from the San Francisco Museum. Under the proposed lease, both operators would also be authorized to host special events in Shed A.

Construction for this interim use lease would be limited to a non-load bearing demising wall separating the museum space from the balance of space in Pier 45 Shed A. In addition, the Taylor Street roll up door will be fitted with glass to identify the museum entrance. Another roll up door on Pier 45's east apron also would be fitted with glass to open up views of the Bay.

Shed A, along with the other sheds on Pier 45, has been determined eligible for listing on the National Register of Historic Places. The proposed construction and facility improvements would be carried out consistent with Secretary of Interior standards for rehabilitation of historic buildings.

B. Project Analyzed in the Hyde Steet Fishing Harbor/Pier 45 Shed A & C Final Environmental Impact Report

In 1988, the Port proposed construction of the Hyde Steet Fishing Harbor and in 1996 a Fisheries Center in Sheds A & C. This project was analyzed in the Hyde Steet Fishing Harbor/Pier 45 Shed A & C Final EIR (Hyde Street FEIR), certified by the San Francisco Planning Commission on December 12, 1996. The Fisheries Center originally had been defined as the Port's preferred development program for Pier 45 Sheds A & C, which consisted of the following within Shed A:

- Shed A: 40,000 sq. ft. of retail and recreational use; administrative offices and support space for the Pampanito submarine exhibit, 100 parking spaces, and 20,000 sq. ft. of outdoor public access

At almost four times the size, this development program substantially exceeds the size and intensity of uses proposed in the S. F. Museum lease. Accordingly, the environmental impacts analyzed in the Hyde Street FEIR associated with this larger development program exceed those that would be generated by the S. F. Maritime Museum and Musee Mecanique exhibit space, museum gift shop, and occasional special events of these two organizations. Therefore, the environmental impacts of the proposed lease fall within and are covered by the environmental analysis contained in the Hyde Street FEIR.

C. Relationship of Project to Waterfront Land Use Plan Final EIR

In January 1997, the San Francisco Planning Commission certified the Waterfront Land Use Plan Final EIR (WLUP FEIR), a Program EIR that analyzed the impacts of a full range of land use alternatives and variants on Port property, including the Fisherman's Wharf area. The Waterfront Land Use Plan, and the WLUP FEIR and associated CEQA Findings adopted by the Port Commission in June 1997 also include a comprehensive discussion of the Port's public trust and financial responsibilities, and the local and state regulatory framework for

waterfront projects, which set the context for the Port's land use policies, including those for Fisherman's Wharf.

The land use assumptions for Fisherman's Wharf area assumed in the WLUP FEIR include uses that were described and analyzed in the Hyde Street FEIR. Since the proposed lease with the S. F. Museum is less intensive than the uses that were analyzed in the Hyde Street FEIR, the WLUP FEIR analysis with respect to uses in the Fisherman's Wharf subarea are conservative and, like the Hyde Street FEIR, analyze and discuss greater environmental impacts than those that would be generated by the smaller S. F. Museum lease proposal.

IV: MITIGATION MEASURES

The Hyde Street FEIR includes a description of mitigation measures to eliminate significant impacts of the project as described in that EIR, most of which applied to the Hyde Street Harbor. All mitigation measures applicable to the Project, as summarized below, would be adopted by the Port Commission as part of its approval of the Project. The Mitigation Measure numbering below corresponds with the numbering as it is presented in the Hyde Street FEIR. See Exhibit B-1 for the complete citation of the Hyde Street FEIR mitigation measures.

Water Quality Measure 6 – The Port will continue to use a work skiff one or two hours each day to clean up floating debris in the harbor, and increase the frequency of the operation, on an as needed basis.

Water Quality Measure 11 – The Port will continue to coordinate with restaurant owners and nearby commercial operators to improve housekeeping practices to reduce litter and trash from entering the harbor. All garbage areas could be confined with catchment basins to prevent flow of stormwater into the Bay.

V: SIGNIFICANT ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED

The Hyde Street FEIR found that, with implementation of available mitigation measures identified therein, there would be no significant environmental effects associated with the uses assumed in Pier 45 Shed A, described in III A. Project Description above. Therefore, the more modest intensity of use proposed by the S.F. Museum also would not generate any significant environmental effects.

The WLUP FEIR's program-level analysis environmental effects finds unavoidable significant traffic impacts associated with cumulative amount of development assumed in Alternative B. The WLUP FEIR also concluded that transit demand on the MUNI F-line from cumulative development under Alternatives A and B would exceed the planned capacity of that line. However, the 9,735 sq. ft. of space currently proposed in the S.F. Museum lease represents less than one percent of new development between Fisherman's Wharf and China Basin in that Alternative, and therefore would constitute a less than significant contribution to that condition. The WLUP FEIR also states that the cumulative development levels in

Alternatives A and B would exceed significant impact thresholds established by the Bay Area Air Quality Management District, however it also acknowledges that those thresholds were designed to be applied to individual projects, not a land use plan covering a large area. To the extent that the Project contributes to unavoidable significant adverse impacts identified in the WLUP FEIR, and in the Port Commission's Resolution approving the Waterfront Land Use Plan, this Commission reaffirms the Statement of Overriding Benefits of the Waterfront Land Use Plan set forth in that approving Resolution and the Findings incorporated therein.

G/oshima/pcomm/22

EXHIBIT B-1
PIER 45 SHED A LEASE – S.F. MUSEUM
REQUIRED MITIGATION MEASURES

The following mitigation measures are identified in the Hyde Street FEIR, Case File 93.574E, certified December 12, 1996, which will be implemented as part of the lease to S.F. Museum at Pier 45 Shed A.

Water Quality Measure 6

The Port will continue to use a work skiff one or two hours each day to clean up floating debris in the harbor. The Port will increase the frequency of the skiff operation, on an as needed basis.

Water Quality Measure 11

The Port will continue to coordinate with restaurant owners and nearby commercial operators to improve housekeeping practices (such as improved grease disposal bins, dumpsters with side covers, increased covered garbage receptacles, sidewalk sweeping, etc.) to reduce litter and trash from entering the harbor.

EXHIBIT B-2
PORT OF SAN FRANCISCO PIER 45, SHED A
MITIGATION MEASURE MONITORING PROGRAM
Exhibit to Pier 45, Shed A CEQA Findings, adopted by Port Commission Resolution 02-31, July 9, 2002

Mitigation Measure	Implementation Responsibility	Action Required	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
Water Quality					
6. The Port will continue to use a work skiff one to two hours each day to clean up floating debris in the harbor, and increase the frequency of the operations, on an as needed basis.	Port	As needed, in addition to containment of trash compaction areas and installation of new catchment basins	Daily	Port Maintenance and Maritime	Ongoing
11. The Port will continue to coordinate with restaurant owners and nearby commercial operators to improve housekeeping practices to reduce litter and trash from entering the harbor.	S.F. Museum	Tenant to provide litter containers, conduct litter collection and clean up within leasehold and any required public access areas.	Monitor trash areas daily, and during trash pick-ups	Port maintenance staff will monitor litter control on trash pick-up days.	Ongoing, trash monitoring: as part of scheduled trash pick-ups during duration of lease term (2-1/2 years)
<i>G/oshima/pconm/22b</i>					

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DOCUMENTS DEPT.

AUG 22 2002

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SAN FRANCISCO PORT COMMISSION

JULY 9, 2002 MINUTES OF THE REGULAR MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE MCCARTHY
HON. BRIAN MCWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

**CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION**

**MINUTES OF THE MEETING
JULY 9, 2002**

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:00 p.m. Commissioners Michael Hardeman, Kimberly Brandon, Brian McWilliams and Pius Lee were present. Commissioner McCarthy was not present.

2. APPROVAL OF MINUTES - June 25, 2002 Regular Meeting

ACTION: Commissioner Lee moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; the minutes of the June 25, 2002 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Wong reported the following:

• July 4th Waterfront Celebration

The City of San Francisco's annual Fourth of July waterfront celebration was presented by the City of San Francisco, Port Commission, Clear Channel, KTVU, and the Fisherman's Wharf Merchants. The San Francisco Police Department estimated approximately 350,000 people attended the celebration. Continuous live entertainment began at 2:00 p.m. at stages located at Pier 45, the Anchorage, Pier 39, and Aquatic Park until the fireworks display at 9:15 p.m. The fireworks display was televised live on KTVU. The synchronous fireworks were launched from locations at the Municipal Pier, and two barges mid-Bay between Pier 45 and Pier 39. This year's July 4th celebration on the waterfront was without any major incidents and a good time was had by all.

• China Basin Park Groundbreaking Ceremony on July 16th at 10am.

At the June 25th Commission meeting, the Commission granted approval of the name "China Basin Park" for the new shoreline open space area to be constructed by the San Francisco Giants. The Commission also approved the name of "McCovey Point" for an area within the park that will contain a statue of the famous baseball player. The official groundbreaking ceremony for "McCovey Point" at China Basin Park will take place on Tuesday, July 16th at 10:00 a.m., located on Terry Francois Boulevard between the Third Street Bridge and Pier 48. He invited the Commission to join the SF Giants and the Port for the groundbreaking ceremony.

4. ENGINEERING & MAINTENANCE

A. Request for authorization to advertise for competitive bids for Pier 70 Wharf 5 Demolition Project. (Resolution No. 02-25)

Leo Bragagnolo, Construction Manager, presented the item and requested Commission's approval.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-25 was adopted.

B. Request for authorization to advertise for competitive bids for Pier 48 electrical upgrades. (Resolution No. 02-26)

Kathy Nakazawa, Project Manager, presented the item and requested Commission's approval.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-26 was adopted.

C. Request for authorization to advertise for competitive bids for Pier 45 Shed C Fish Processing Facilities Improvements. (Resolution No. 02-27) **NOT APPROVED – THIS ITEM WAS DEFERRED TO THE NEXT MEETING.**

Tom Trimbur, Project Manager, presented the item and requested Commission's approval. Port staff has been working closely with the Department of Parking and Traffic (DPT) regarding traffic and parking issues in the Fisherman's Wharf area. DPT believes that the proposed angled parking in the valley is a good solution to the parking, delivery and access problems at Pier 45. They also looked at ways to reduce the pedestrian and vehicular conflicts at the intersection of Taylor Street and little Embarcadero, close to the vicinity of Shed A and will be proposing the rerouting of pedestrian traffic to keep them out of that intersection. Staff is in the final process of design development and plans to go out to bid late July or early August and a Notice to Proceed issued in October. Staff will continue to work with the community on this project.

Commissioner McWilliams inquired about the rerouting of pedestrian traffic. Mr. Trimbur explained that the rerouting of pedestrian traffic would be at the very end of Taylor Street. Port staff will be striping a large crosswalk in the middle of that intersection to get the pedestrians across Taylor street and little Embarcadero toward Red & White Fleet and on the other side of Tait's so they could cross over to the Pampanito or elsewhere.

Mike Berline spoke in favor of the proposed Shed C design but with a few caveats. He requested to keep the momentum going, correct the problems and proceed with the project. He suggested that the Port look at some of the outstanding issues such as the piles, drains, fire hazard, traffic flow, management and access to the pier. In October 1999, Kirk Bennett informed them about the pile problem in the fish alley but was subsequently neglected. He suggested looking at the retrofitting of the defective drains in Sheds B and D and look at the valley box and loading docks. On April 2nd, every single Pier 45 processors along with truckers went on record expressing their concerns about the significant impacts of the Shed C development on Shed D tenants. The Port responded that, according to their study, the congestion in the valley will not increase significantly. In January 2002, a technical meeting was held with the processors but it was pretty late in the process to begin working with the community. Written concerns regarding Pier 45

simply stopped being responded to. A few, if any, of the Piers 45, 28 and 33 processors are in the meeting today, not for a lack of interest, but they feel shunned. He recommended that all parties involved roll up their sleeves, face the issues and get on with the project. Since Commissioner McCarthy was not present and Pier 45 is an important project to her, he asked the Commission to hold off approval of this item until her return.

Arnold Weber provided the Commission copies of Charlie Akwa's letters to the City Attorney and Commissioner McWilliams outlining her concerns regarding the project: Mr. Weber mentioned Ms. Akwa's suggestion to evaluate traffic during the early morning hours when traffic is heavy. He also reiterated her concerns regarding public safety i.e. the trucks will pose a dangerous condition at Pier 45. It will obstruct the only access to the rear of Shed B & D for emergency vehicles in the event of a fire. Mr. Weber indicated that her major concern is that the project, as currently proposed, would breach her contract. It would deny her and her customers reasonable access to her facilities and leave her no choice but to initiate a lawsuit if she can't get any relief. He also mentioned Ms. Akwa's understanding of a proposal at Shed A which would provide more room instead of having the common dock close to her facility.

Tom Creedon, Fisherman's Wharf Advisory Group, responded to some of the issues raised by the speakers. The Port has spent considerable amount of time with public meetings through the Fisherman's Wharf Waterfront Advisory Group. Meetings were held to deal with the drains in the existing facility as well as the proposed facility at Shed C. Maintenance, Real Estate and the Environment staffs visited many of the tenants. A number of the tenants were not aware of how to clean their interceptors at their facility to make sure their drains operated properly. This program of periodic and sporadic inspections will benefit the tenants. The problems were mainly maintenance issues and not necessarily design. The design of each tenant's space was the responsibility of the tenant. Very few of the tenants left the spaces the way they were originally built by the Port when they took over the lease. He agreed with Mike Berline regarding the loading dock issue. The tenants have their own particular needs. John Zoranovich has bent over backwards in meeting with the tenants to make sure that everyone's needs were addressed. People who objected to the loading docks were objecting because it took up parking spaces for their employees. It's unreasonable to think that space that is so valuable to conduct the fish moving and processing business should be occupied by people who drive in the morning and leave their car there all day. The Port has made provisions for alternate locations for parking. Peter Pomilla was one of the people who participated. He is not the principal in the business; therefore, next week, there could be another person responding to their dislikes. People have to look at this from an engineering standpoint and what's going to work out best for the long haul. Regarding the congestion in the valley, Commissioner McCarthy saw it first hand and it was not nearly as bad as reported by the tenants. At the last Commission meeting, he mentioned that to take 20 minutes to turn a semi-truck around is mind boggling. This happens to be a personal conflict with Charlie Akwa as the turnaround goes in the vicinity of the main entrance to her business. To turn a truck around takes a matter of minutes with all safety concerns taken into consideration. This is an individual self-serving request. On numerous occasions, he has met with the Port Marshal about fire access and the Fire Marshal will stick by his guns that there will be a fire lane and it will be maintained.

Commissioner McWilliams indicated that great progress has been made on this project. He is a proponent of accommodating the fish industry at Pier 45 in every way including building out Shed C. However, he continues to receive messages from the tenants and stakeholders that although everything is getting close to being put together, more work needs to be done before an RFP is issued to the public. It has become increasingly clear that the Port needs to look at active management on the pier. The tenants have mentioned about problems with fire access, ADA, traffic and a number of issues including maintenance and subleasing that needs active management. He expected a report from staff that could have been discussed publicly and looked at the options and cost of active management of the pier. The issue of pedestrian traffic is still problematic. The wharf is packed with people. To think that striping could be part of the solution is a bit of stretch particularly in the summer time. He sees public safety as an issue and a concern of many of the stakeholders. He sensed that the stakeholders are supportive of the process but are not confident that everything that needs to be considered has been considered yet. He suggested deferring approval of this item to the next meeting as it would provide all parties sufficient time and an opportunity to produce positive results. He also requested for a public discussion on whether an active management system would be part of the solution for the pier.

Commissioner Hardeman inquired if there was an immediate need for this item to move forward. Mr. Trimbur replied that the schedule is driven by our commitment to the Fisherman's Wharf Waterfront Advisory Group, to the stakeholders and to the Port Commission in carrying forward this project.

Kirk Bennett, Planning & Development, indicated that staff has received lengthy input on this project. The Engineering Department addressed the engineering issues that were raised. When the management issues were raised during the public discussion, the Real Estate department gave it a more focused look and will continue to do so. Port staff experienced the same operational problems when Sheds B and D were being developed but staff was able to work through them. The Fisherman's Wharf Advisory Group was originally established to work out the operational issues. When the tenants moved into Sheds B and D, they had to learn to work with their neighbors and made the facility work.

Commissioner Hardeman mentioned that Mr. Creedon offered sound solutions to the problems.

Mr. Creedon indicated that the tenants concerns are not about construction. Staff would like this project to go out to bid. John Zoranovich set a deadline a year and a half ago and staff has worked so hard to meeting the deadline and they should be commended. Commissioner McWilliams brought up some good points but he does not see any reason to hold off putting this project out to bid.

Commissioner Brandon concurred with Commissioner McWilliams suggestion of having active management for the pier. She suggested that staff look into the feasibility of having someone physically manage Sheds B, C and D for the first few months to ensure that everything is in place and everyone is working together.

Commissioner Lee indicated that he was concerned about any possible lawsuits. He inquired if it would be too late to defer approval of this item to the next meeting in order to provide all parties an opportunity to straighten out the problems.

Nita Mizushima, Chief Harbor Engineer, indicated that she has been working closely with the cross-functional team to address these issues. She acknowledged Mike Berline's concerns and his request to sit down with the stakeholders. The team has accommodated some of the changes that the stakeholders have requested. The traffic control, the positioning of the striping in the valley, and the addition of an accessible path were changed as a result of the community's concerns. Deferring approval of this item to the next meeting would not adversely impact the project. The team will continue to work with all parties throughout the entire process.

Commissioner McWilliams was concerned that the design might change and it might impact the RFP. Deferring approval of this item to the next meeting is a reasonable request. It would be incumbent upon everyone involved to resolve the outstanding issues. He requested that Port staff report back to the Commission on the status of their meetings with the tenants. He requested that the report include the active management issue that could be discussed in a meaningful way so the Commission is aware of the options and how the options would interface with what has been done related to preparing Pier 45 Shed C for fish processing.

Commissioner Hardeman suggested that Commissioner McWilliams work with Commissioner McCarthy on this item so it would be ready for a vote at the next meeting.

Commissioner Hardeman asked Mr. Creedon to inform the advisory group that since a lot of items were raised at this meeting, the Commission deferred its approval to the next Commission meeting. He assured him that the Commission is in support of this project but would like to resolve the outstanding issues before approving it.

ACTION: Commissioner Brandon moved approval to defer this item to the next meeting; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; this item was deferred to the next meeting.

5. PLANNING & DEVELOPMENT

- A. Request for approval and ratification of the grant agreement to accept and expend \$200,000 in grant funds from the State Wildlife Conservation Board to construct public access improvements for the Ferry Terminal Public Pier. (Resolution No. 02-28)

Mr. Dan Hodapp, Planning & Development, presented the item and requested Commission's approval.

Ernestine Weiss asked where the public access would be located. Mr. Hodapp replied that a breakwater was recently constructed south of the Agricultural Building; the breakwater would be the public access pier.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-28 was adopted.

- B. Request for authorization to enter into a contract amendment with the consultant team led by Economics & Planning Systems, Inc. for an additional \$60,000 for further assistance negotiating the Disposition and Development Agreement and related transaction documents relating to the Bryant Street Pier Project. (Resolution No. 02-29)

Mr. John Doll, Planning & Development, presented the item and requested Commission's approval. Mr. Doll mentioned that this is an amendment to the existing EPS contract.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-29 was adopted.

Commissioner Lee asked if there would be a conflict of interest since the consultant is working for the Port and the cruise ship developer is paying for \$150,000 for services in connection with the cruise terminal. Deputy City Attorney Neil Sekhri replied that there is no legal conflict of interest since the contract is between the Port and the consultant. The contract is not being paid directly to the consultant by the developer.

- C. Informational Presentation on the South Beach Park and Harbor Improvement Project. (No Action Required)

Mr. John Doll gave a brief background of the project and turned the presentation over to Amy Neches of the Redevelopment Agency.

Ms. Neches indicated that South Beach was constructed by the Redevelopment Agency in the mid-1980. The Agency leases this property from the Port for the purpose of investing public improvements as a catalyst for the redevelopment of the area. In 1985, the agency undertook the development of the South Beach Harbor, 700-berth small boat harbor and the initial improvement for South Beach Park. That project was funded through a combination of tax increment funds and a loan from the State Department of Boating and Waterways (Cal Boating). The project; however, could not be completed because of funding limitations. With the growth in tax increment in the project area from over 2500 housing units, from the Gap and other commercial projects, the Agency was able to complete their obligations to the Port and to the community. The agency was able to put together nearly \$12 million of funds from tax increment proceeds and a loan from Cal Boating.

In July 2001, the Agency entered into a multi-disciplinary architecture and engineering contract with EDAW which includes Tom Elliot Fisch as architects and Moffat & Nichol providing marine engineering. They have been working closely with members of the community, BCDC and Port staff. The project goals, developed through this collaborative process have been focused on expanding the park, expanding public access to the waterfront and replacing the temporary improvements such as the harbor master trailers with permanent structures. The specific project elements are as follows:

- (1) Park and public access improvements which include the completion of the South Beach Promenade, new pedestrian plazas and upgrades to Pier 40;
- (2) Harbor services building of approximately 12,600 s.f. which will include a

community meeting room, public restrooms and non-profit work space as well as rental space for the South Beach Yacht Club.

- (3) Harbor improvements including a new guest dock on the north side of Pier 40 to expand public use of the waterfront, a dinghy dock for youth and disabled sailing programs and new disabled access upgrades to bring the harbor in full ADA compliance.
- (4) Pier 40 shed repairs including repair of the leaky roofs and replacement of damaged windows.

Phase 2 work will include completion of the under-deck improvements and pile repairs to Pier 40, improvements for harbor-serving tenant spaces within the shed, and completion of public access boardwalk improvements around the entire pier.

Ms. Neches showed the Commission a slide presentation of the harbor improvement project. The current harbor master office is in a trailer in the parking lot that will be replaced by a new harbor services building. The existing portion of the promenade, which is directly adjacent to the harbor, is well used by the public; the sailing ship restaurant interrupts the promenade. The Agency has acted to exercise its option to demolish the ship and are working with Port staff. The Java House will remain in place. One of their goals is to expand the park, the seating area and make the area in front of Java House more useable and friendly to the public. They have recently completed a children's play area in the South Beach Park. They look forward to creating a new public plaza, seating areas as well as restrooms near the children's play area. They plan to resurface the uncovered portion of Pier 40 making it smaller and create public seating and boardwalk areas along the edges of the pier, including improving the under deck areas of Pier 40 to support those improvements. The current doublewide trailer of the yacht club would be removed and rental space will be created in the South Beach Services building. There will be dinghy storage for their youth and disabled sailing programs and public improvements along the edge with seating, lighting and better paving. The Bike Hut will remain at the harbor but they plan to replace it with a permanent structure. They will put a new utility dock on the other side of the south utility dock where they will add a dinghy dock for youths and disabled sailing programs. The clear windows on the top of Pier 40 are broken, allowing water to come in and deteriorate the structure. They will reglaze and reroof the shed on Pier 40 to make it water tight and preserve it for the long term.

Jacinta McCann, EDAW, Inc., presented the site plan and discussed the proposed changes. The most significant change relates to the waterside and pier related improvements. A new guest dock will be constructed on the north side. They will undertake repairs to the underside of the wharf to ensure that the connection is in good shape. The jib boom will be located on the south side of the apron. They will repair the edge of the apron as they add the new enhanced amenities and new railing. These new maritime elements will enhance accessibility to the water's edge for the disabled, youth and others to launch small sailing craft. The jib boom will be used to hoist up the small craft to the new dinghy storage areas on the apron. They proposed to upgrade the paving and provide a clearer designation of the pedestrian and vehicular travel routes through the plaza particularly a safe access to the parking zone. The shape of the grass terrace has changed. Circulation is

now being proposed associated with the reshaped grass terrace. The north side of Pier 40 is a very significant access point. The proposed public access, a very important part of the project, will be constructed around the full perimeter of the Pier 40 shed as part of the Phase 2 work. At that time, the underside of the pier will be upgraded as well as selected pile upgrades to deliver a long-term stable structure. The new additional public access is particularly important to complete the access along the water's edge where the Sailing Ship is currently located. There will be new access ways associated with the new building that will house the harbor services building and lease space for the sailing people as well as community and storage areas. There will be a reconfigured open space along the north side of the building. One of the main goals of the project is to increase the amount of green space in the area. The site plan shows some of the proposed treatments in the Pier 40 apron area such as increased number of seats, lights and additional trees introduced into the space to enhance the character and make it an attractive place for people to sit and enjoy the environment. A shade structure will be introduced in the area to provide additional shelter for people waiting for access to the guest dock. They are proposing an additional area of grass be created as part of the final park. Glass windshield will be introduced into the plaza area to provide protection to people sitting on the pier apron and enhance the environment and the microclimate in the area. The type of jib boom they proposed will be constructed in the south edge of the apron. The type of shelter they propose will be introduced in that space.

Amy Eliot, from Tom Eliot Fisch, discussed the floor plans of the building. This unique building takes its cue and design from the site conditions around it. It seeks to organize the environment around it as it sits effectively in the middle of the marina. It is situated between a parking lot on one side, the waterfront on the east and the children's play area on the north side. In its configuration, they tried to build optimized use from the building and its function as well as minimal view blockage from the park and the Embarcadero. It is positioned well, relative to the major views across the condominiums, across the Embarcadero, and towards the harbor which was an important factor in the citizen's advisory sessions and workshops. It also creates, to the north side between itself and the children's play area, a plaza that can be used in conjunction with the play area and various activities as well as with the community room. The citizens and users of the South Beach Park and harbor indicated that this is a very windy site. The building creates a shelter area on the waterside within the grassy rectangles with seating around them and enables people to gather their shelter from the wind. The first floor of the building is organized to support the functions of the spaces around it, specifically, the harbor, the marina and the community room. The lobby is a place where you can see through the building. The community room is designed to be transparent so its activities are very visible to the passersby as well as you could see through the end of the building toward the water. The right side of the floor plan is the harbor services, the working guts of the harbor operation. There are public restrooms, boater showers and toilet areas on the waterside. The harbormaster's office and the yacht club spaces are located on the upper floor of the building. Both spaces open out into a large deck which wraps around the south end of the building and has public access from the south end. On one side is PacBell Park and the parking lot which supports the marina and on the right side is the waterfront element. They designed the building to be opaque to the parking lot with a very strong visual element of wood grill that provides a screen for the spaces inside the building against the western sun as well as a very characteristic element. In contrast, the waterfront side is

glossy and very open, opening itself out to the water and to all the views surrounding the area. The major materials of the building are: wood grill, the dominant element on the landside; concrete masonry unit at the base of the building, a very low maintenance material; glass and cement plaster above the masonry units to contain the base of the building. The roof of the building is made out of a zinc metal element which can be seen from PacBell Park as well as from the neighboring condominiums. The north elevation shows the first floor of the community room and the transparency of the building to the north and to the south beach park and the harbor master office above with the wood grill wall wrapping around to make an entry to the community room and giving it identity from the city side. The other end shows the deck which wraps around the South Beach Yacht Club and shows the character of the roof which opens up to the water views. A couple of prospective used showing the building from the children's play area, from the northwest corner, you can see the transparency of the wood screen which at night, translates the windows very clearly through the grill. The grill would disappear and the at the right end of the grill, the wood element becomes a wind screen for the open deck of the yacht club. The major lobby entry is the vertical glazed element which is in the center of the building. The harbor services office is on the top floor and the yacht club on the left side.

Amy Neches mentioned that Agency staff and their consultants have been working very closely with Port and BCDC staffs on this project. Staff will continue to work with Port staff over the next few months to determine the exact scope and design for the harbor improvements. They have made two presentations at the BCDC Design Review Board and the Port Waterfront Design Advisory Committee joint meetings. The project was very well received at the meetings and received positive feedback. They have also worked very closely with the citizens advisory committee and have endorsed the project. The agency will seek funding for the Phase 2 improvements (estimated at \$4 million) in the Agency's 2003-2004 budget and from tax increments available in the Rincon Point-South Beach Project Area. Subject to Port Commission's comments, the Redevelopment Commission will consider the Schematic Design for the Phase 1 improvements, including the Harbor Services Building at their July 23rd meeting. Following approval, Agency staff and the consulting team will undertake design development and construction documentation. Contract bidding is anticipated for spring 2003 with a construction period of approximately 18 months.

Commissioner McWilliams inquired if the harbor services building is part of the first phase of the project. Ms. Neches replied to the affirmative. He asked if the yacht club would be displaced. Ms. Neches replied that they will move the trailer that serves the harbormaster toward Pier 50 and build the building. Both the yacht club and the harbormaster would be able to move in so their operations would not be disrupted.

Commissioner Brandon inquired about the original term of the lease. Ms. Neches replied that the property was leased by the Agency from the Port pursuant to a 1984 Option to Lease Agreement. The leases are all 50-year leases but the terms of the Option Agreement states that once the redevelopment work is completed, the property would be returned to the Port for long-term management. Their goals are to complete the project to give the Port a redeveloped property and to ensure that the harbor is financially stable and self-supporting at the time they return the property to the Port. There are a lot of bond covenants and legal issues that would need to be worked out. When those issues are

resolved, such a transfer could take place when this project is done within a 3-5 year time frame. This was contemplated under the original option to this agreement.

Commissioner Lee remarked that this is a wonderful project. People could see through all the bay views. However, he recommended not enclosing the other side of the building so people could see both sides.

Ms. Neches replied that they received tremendous positive feedback from the Agency Commission and BCDC. The building looks different on the other side because there are windows on the western side of the building. Several windows will provide views out and light coming in but it faces west and gets harsh lights. They would like to have an environmentally responsible building. One of the ways to do that is to shade the windows from direct western sun to keep the building cool. The views to the parking lot are not as wonderful as the views out to the water but they believe they can make the building permeable on both sides. She appreciated Commissioner Lee's input and will give it some thought.

Norman Pearce, SPUR, introduced a relatively new committee at SPUR, the Waterfront Recreation and Park Subcommittee. They have been formulating ideas and concepts regarding urban development. The waterfront seems to be under multiple jurisdictions and there is no true continuity in the recreational aspect of the waterfront usage. There should be better coordination with the Pier 40 and the Marina Green small craft harbor projects. There is little oversight as to the waterfront access and recreation between all of the projects which include projects at Mission Bay, India Basin, Pier 27, Pier 30-32 and Bryant Street Wharf. There are opportunities to include things like the life boat, rowing teams, the dragon boat, junior sailing programs, manpowered row boats and kayaking in the projects. He suggested that the Port Commission instruct staff to invite the Redevelopment Agency to a conference on how to incorporate the recreational aspect of this project so that there is no redundancy, overkill, and misspending of funds.

Richard Dickerson, Rincon Point-South Beach CAC chairman, gave a background of their participation in the project. In wanting to get this final piece of their area developed, they came to grips with being fiscally responsible in what they proposed to the Agency to put into the park. Members of the yacht club, the neighborhood and tenants of Pier 40 and boat owners participated in this project. The CAC unanimously endorsed this proposed project. They are pleased that Agency staff, Port staff and the consultants were able to include all of the different aspects that each of the groups wanted in the project. They believe it will complete their area and would be a nice resource for the public and everyone living in the area for many years to come.

Jeffrey Leibovitz, Rincon Point-South Beach CAC, indicated that they are lucky to have a talented group of people to present such a wonderful design to the Port and to the residents of San Francisco and their community. They are looking forward to this project. They obviously need a community room. The South Beach Yacht Club has been very kind to allow them to have their CAC meetings in their club. They are all looking forward to having something that is permanent including the restrooms. This is a unique building and it will stand on its merits on the waterfront. They look forward to the completion of the project. He thanked the Commission, staffs and the consultants. He also thanked the

Commission for keeping the China Basin name included in the China Basin Park.

Michael Sweet, Rincon Point-South Beach CAC Vice Chair, was delighted to see the plans because they thought the funding for the project design would not be secured. He was delighted to see a design of the project that included a lot of the input from the community and is responsive to community needs. He is thrilled of what is happening in the area especially with the children's play area and the community room. The CAC was also delighted that the Dolph Rempp ship will be demolished. He thanked the Port and Agency staffs and looked forward to seeing the design come to fruition.

Commissioner Hardeman concurred with the speakers' statements that this is a wonderful project. It is wonderful for the South Beach neighborhood to get something in return because they have always let the Port and others do things in their neighborhood that are progressive and nice for everyone. He thanked Port and Agency staffs for their hard work.

D. Request for approval of extension of Exclusive Negotiations for Embarcadero Hotel Project at Broadway on Seawall Lots 323, 324 and 322-1. (Resolution No. 02-30)

Jennifer Sobol, Planning & Development presented the item and requested Commission's approval.

Tom Flowers thanked staff for proposing a shorter extension. He indicated that the Port in their conditions omitted the financial aspect of this project. He requested that another provision be included in the resolution i.e. Stanford be required to submit an itemized list their equity and debt financing. In his opinion, reducing the project from 420 to 250 rooms is not going to change the financial aspect of the project. Adding the additional provision would assist staff and the Commission in their evaluation of the project. In his personal opinion, Mr. Flowers indicated that enough time has expired and the matter ought to be dropped. He asked the Commission to evaluate alternative programs.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-30 was adopted.

6. REAL ESTATE

A. Request for adoption of CEQA Findings and for approval to lease a portion of Pier 45, Shed A to San Francisco Museum and Historical Society and its proposed sublessee, Musee Mecanique, for a short term use. (Resolution No. 02-31)

Carol Anderson, Asst. Deputy Director, presented the item and requested Commission's approval.

Diane Oshima, Planning & Development, indicated that in December 1996, the City Planning Department has certified a Final Environmental Impact Report for the Hyde Street Harbor (Hyde Street FEIR) and new uses in Pier 45 Sheds A and C, pursuant to the California Environmental Quality Act (CEQA). The original development program assumed for Shed A was for 40,000 s.f. of retail and recreational uses, artists gallery and workshop spaces. The impact analysis that was done covers the impacts that will be

generated by this smaller interim use. The Waterfront Land Use Plan Final EIR (WLUP FEIR) certified in January 1997 assumed the same visitor center based development program in the analysis of impacts. Pursuant to CEQA, the Commission must adopt CEQA findings regarding the relevant environmental impact information from both the FEIRs prior to taking an action on the Pier 45 Shed A lease with the S.F. Museum. The CEQA findings present in more detail the scope and analysis conclusions of both the Hyde Street and WLUP FEIRs including the mitigation measures and unavoidable significant effects on the environment. In addition, the findings are accompanied by a list of the required mitigation measures for the proposed lease as well as an associated mitigation monitoring program which lays out how they will be implemented. The Port Commission may rely on both the FEIRs when approving this resolution because there are no changes to the project analyzed in those environmental documents that would generate significant impacts, and there are no new circumstances under which the proposed use is being undertaken that would result in new or more significant adverse impacts than those already analyzed.

Commissioner McWilliams indicated at an earlier presentation, staff reported that foot traffic will be directed away from that area. He asked about the impact of truck traffic or potential traffic into the pier. Nita Mizushima replied that the Mr. Trimbur's comments regarding reconfiguring the intersection between the tail end of Taylor and little Embarcadero (in front of Shed A), he meant moving the pedestrians out from the center of the intersection. The new plan that was discussed with DPT pushes the pedestrians up against Shed A so whenever they cross traffic, they would cross at a 90-degree angle. The pedestrians would be close to the building as possible and away from the traffic. With regards to the truck traffic in the shed, staff is maintaining the roll-up door access into Shed A.

Commissioner Lee supports the project but was concerned about the 100% rent credit. The Port will only receive \$90,000 in income for the 2-½ year lease. He recommended that the amount of rent credit to the tenant should be limited to protect the interest of the Port.

Commissioner Brandon suggested that the rent credit should be limited to 50% so the Port could receive income from the lease. She inquired about the cost of building the demising wall.

Jim Lazarus, SF Museum & Historical Society, clarified that the Museum agreed to build the demising wall separating the museum space from the balance of space in Pier 45 Shed A at whatever cost the Port agrees to. The Port is agreeing with Red & White to wall off the space. It would be cost effective to build the wall at the same time the museum is paying for its wall. The Port is not paying for that wall.

Ms. Anderson clarified that the Port is still in negotiations with Red & White Fleet and has not yet agreed to anything. The estimated cost of the wall is \$40,000. The Port recommended a 100% rent credit because the museum is building the wall as a favor to the Port.

Commissioner Brandon suggested that the Port should wait until Red & White Fleet moves into Pier 45 so that the Port won't have to give rent credit for a wall that's not

going to be used. Mr. Lazarus indicated that Red & White will be using the space and they will have to build a wall in the middle of an active museum. It made sense to create the space now rather than next year when Red & White might be ready to move in.

Commissioner Brandon asked if the \$3,000 rent per month from the museum is within the rent parameters. Ms. Anderson replied that the Port has not established rent parameters for Pier 45. The amount was derived from a comparable rent that the Pampanito is paying for a short-term lease. The Pampanito's rent is approximately \$2200 a month.

Commissioner Lee asked about the cost of the improvements. Ms. Anderson replied that it would cost approximately \$40,000. He suggested that the rent credit should be limited to up to \$40,000 and this amount should also be noted in the lease agreement to protect the Port and the Port would not lose any money from this transaction.

Commissioner Brandon was concerned about the terms of the lease because of the uncertain need for the wall in the future. Mr. Lazarus explained that the rent credit is for the wall that Red & White Fleet will need for their office space but if the rent credit is a concern, he agreed to remove that provision out of the lease. He'll either take a check from the Port in the amount of \$40,000 to build the wall or Red & White can pay them the \$40,000 and get a rent credit from the Port when they move in.

Commissioner Brandon asked about the possibility of having Port maintenance staff build the wall since there is a prospective tenant and it would save the Port \$40,000. Ms. Anderson replied that she was not sure if maintenance staff is available to do it at this time.

Commissioner Brandon asked about the project timeline. Mr. Lazarus replied that they are ready to get the building permit to begin the major wall construction within the next two weeks. They are currently working on the electrical drawings. They expect the project to be under construction by the first of September, since the Musee Mecanique has to be out of the Cliff House by mid-September. They plan to open the museum to the public by the end of October.

Commissioner Lee reiterated his request to take the rent credit provision out of the lease agreement.

Commissioner McWilliams asked if there was a fire or safety issue regarding the demising wall or if it is being built for the tenant's convenience. Ms. Anderson replied that the wall is, indeed, for the convenience of future tenants.

Jim Lazarus thanked Doug Wong, Port staff, the Commission, the Mayor and the Board of Supervisors for their unanimous support of this project. They have spent considerable amount of time working with the community and the Fisherman's Wharf area to garner a broad public support for this interim use. This would give the Museum of San Francisco front and center location to get exposure for its future plans to become a significant museum in San Francisco. It allows the Port to help the Musee Mecanique to relocate from the Cliff House on a temporary basis. It would provide the Port a revenue stream. The options are open for future use of the shed such as for fishing, parking, museum uses,

the Bay Center or other proposals. This is a win-win situation for everyone. He thanked the Commission for its consideration and looked forward to working with the Port.

Mike Berline spoke in favor of the proposed lease with a few caveats and requested that the Port keep the momentum, address the problems and proceed with the project. The advisory group recommended a long-term lease to both Red & White and the Pampanito and a 2-½ year lease to the Musee and the Museum. They also suggested that a letter be sent to Chris Martin to encourage him to get his act together for the Bay Center. They recommended that Shed A should not be used by Chris Martin, by Red & White, Pampanito or Musee. Shed A should be reserved for fish processing. They have circulated a joint use schematic showing how these accommodation issues need to be addressed. The central aisle should be left open. The pedestrian access should be shifted to the east apron off the plaza to make sure that the transport requirements and the processors are accommodated. They suggested that Tom Escher and Jim Lazarus work out the best possible east apron plaza entrance. Tait's has a 30-day lease that screws up the front of the pier. They suggested that Scoma's and the Pampanito clean up their areas along the apron. They recommended management of the pier since there will be a lot of players involved. The traffic flow and congestion should be addressed. The advisory committee supported the Franciscan use of Shed A for emergency parking but it created a mess last Friday. It is important to examine the small piece of property right by Tait's, off the east apron, right at the truck entrance to Shed A and the valley. This issue needs to be examined further to prevent future problems.

Joel Schechter, Co-founder of the Ocean Beach Historical Society, indicated that he worked with Ocean Beach residents to preserve the Musee Mecanique. They were pleased to learn that it will be saved and preserved temporarily with San Francisco Museum. Thousands of City residents would like to see the Musee continue to serve the community. It represents the history of playland and oceanside culture that needs to be preserved, shared and enjoyed. He thanked the Museum, the Port and others who offered the Musee Mecanique a home.

Tom Creedon, FWWAG, indicated that Commissioner McWilliams should hang on to his concerns with the foot traffic in front of Shed A. He concurred with Mike Berline's comments regarding the area. The 30-day tenant would probably hamper the success of whatever entity goes in the shed. He thanked Ed Zelinsky for bringing Musee Mecanique to Fisherman's Wharf. He encouraged the Port provide the Bay Center future consideration for its operation.

To solve the wall problem, Jennifer Clary suggested that staff add a clause in the lease that states that either the wall will be built by Port staff or it will be done as a rent credit, whichever Port staff determines is most economically feasible. This way, the best alternative would not be precluded. She supports the San Francisco Museum's relocation to Pier 45 Shed A.

Commissioner Brandon indicated that there is no consistency in the rent paid to the Port by the Pier 45 tenants. Ms. Anderson explained that the museum is a short-term lease. They will provide tenant improvements at Pier 45. The real rent the Port will receive is from percentage rent.

Commissioner Lee indicated that this is a special case because the museum is a non-profit organization. Ms. Anderson indicated that this is an attraction that will bring more visitors in the area and it will have a ripple effect.

Commissioner Brandon asked Port staff to establish rent parameters for Pier 45 leases. Ms. Anderson concurred.

ACTION: Commissioner Lee moved approval of the project without the rent credits; Commissioner Brandon seconded the motion. Three of the Commissioners were in favor; Commissioner McWilliams cast the dissenting vote. Resolution No. 02-31 was adopted.

7. NEW BUSINESS/PUBLIC COMMENT

Brian Connors, Pier 38 Maritime Recreation Center, spoke on behalf of Carl Ernst. Pier 38 MRC is asking for an amendment to their current use to allow for permanent berthing of vessels at the pier. This phase of the project has been in development for two years. They have addressed the Port's concerns related to other aspects of the business operation. Pier 38 has developed a boat sale business, chandlery and a boat repair business and have almost doubled the dry boat storage operations. They are ready to take that operation to the next level. They have provided the Commission a brief informational package outlining the design of the proposed pier and a breakdown of the monetary figures that they expect to produce as a result of the permanent berthing operation. He emphasized that the numbers are very realistic and conservative in terms of the amount of revenue that they can generate. The market that they are going after with regard to permanent berthing is for mega yachts. They believe that this is an under served market for the Bay Area and San Francisco. It is a good deal for both the Port and the City. The berthing of large yachts on a permanent basis at the pier will generate property taxes of approximately over \$1 million per year at no cost to the City or the Port for services. The ability to offer permanent berth for some of the large yachts that are for sale at the pier now will probably increase the sales of those yachts and any sales of yachts generate sales tax for the City, which is estimated at a couple of hundred thousand dollars in sales taxes. They have also provided the Commission two studies on the economic impacts of the berthing of mega yachts. Mega yacht berthing generates at least a couple hundred thousand of dollars per mega yacht per year. In addition, the permanent berthing of these types of vessels would also generate jobs. The permanent berthing will generate larger and steadier income which translates to increased rent to the Port. They have a loan commitment in place for the construction of this project and the loan funds will be used not only for the purpose of installing the floating docks but will be primarily used to complete the public access required by BCDC. The Port will be receiving increased revenue and a vastly improved asset and help increase pedestrian traffic which would provide economic benefits for the local businesses. He assured the Commission that they are not getting rid of transient berthing. Approximately 2200 feet of transient berthing space will be available after the construction is completed. A number of electric street legal carts will be made available to transient boaters for their use. They aim to be a full-service maritime operation.

Richard Stein, City Parking, indicated that they were given permission by the Port to operate Pier 45 for parking on a temporary basis. When the triangle lot is full, they refer cars to Pier 45 and their operation has been successful. However, they are faced with traffic and pedestrian problems at Pier 45. The traffic light on Taylor and Jefferson Streets does not give enough time

for vehicular traffic to cross. He suggested that the traffic light be changed to a blinking yellow light that would force drivers to slow down and a traffic monitor can allow cars to cross the street much longer than the current 15 seconds. When referring people to park at Pier 45, they sometimes hesitate to enter the pier because there are no signs directing them to do so. To correct this problem, they intend to put up signs directing traffic to Pier 45. He asked for the Port's assistance regarding the traffic lights.

Commissioner Hardeman suggested that Mr. Stein should contact Port staff on these problems on a regular basis. Mr. Wong will assign a staff person to help them address their concerns.

8. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Lee moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 6:35 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

- (1) PUBLIC EMPLOYEE APPOINTMENT – This is specifically authorized under California Government Code Section 54957.

- a. Confirmation of Appointment of the Port's Director of Real Estate.

- (2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*The Mills Corporation: Steven Jacobsen
- b. Property: South Beach Development Area @ Pier 40
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*SF Redevelopment Agency: Amy Neches
This item was taken off the calendar.
- c. Property: Piers 38
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Pier 38 Maritime Recreational Center: Carl Ernst
- d. Property: Pier 45
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Red & White Fleet: Tom Escher

- e. Property: Pier 7
Person Negotiating: Port: Mark Lozovoy, Acting Director of Real Estate
*Waterfront Restaurant: Al Falchi
This item was taken off the calendar.

9. RECONVENE IN OPEN SESSION

At 7:30 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner McWilliams moved approval to adjourn executive session and reconvene in open session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner McWilliams moved approval to not disclose any information discussed in executive session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

10. ADJOURNMENT

ACTION: Commissioner McWilliams moved approval to adjourn the meeting; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The meeting was adjourned at 7:30 p.m.



NOTICE OF CANCELLED MEETING

The following Regular Port Commission Meetings have been cancelled:

- JULY 23, 2002 @ 4 P.M.
- AUGUST 13, 2002 @ 4 P.M.

The next Port Commission Meeting is scheduled on:

- AUGUST 27, 2002 @ 4 P.M.

San Francisco Port Commission
Pier 1, San Francisco, CA 94111
(415) 274-0406

DOCUMENTS DEPT.

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SAN FRANCISCO PORT COMMISSION

REGULAR MEETING

4:00 P.M., TUESDAY, AUGUST 27, 2002

BAYSIDE CONFERENCE ROOM

PIER 1, SAN FRANCISCO, CA 94111

22-02

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AGENDA

1. ROLL CALL
2. APPROVAL OF MINUTES - July 9, 2002 Regular Meeting
3. EXECUTIVE
 - A. Executive Director's Report
 - Real Estate Director
 - \$200,000 Grant from the Wildlife Conservation Board - Ferry Terminal Public Pier
 - USS McCampbell
 - Tall Ships 2002
 - Security Grant & RFP for Security Consultant
4. CONSENT
 - A. Request for approval of First Amendment to Lease No. L-12984 with Baydelta Maritime for portions of Pier 15 (Green Street at The Embarcadero). (Resolution No. 02-32) (Staff report provided to the Commission.)
5. MARITIME
 - A. Request for authorization to accept and expend \$500,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for a Port Security Assessment; and for authorization to issue a Request for Proposals from qualified vendors. (Resolution No. 02-33) (Staff report provided to the Commission.)
6. ENGINEERING & MAINTENANCE
 - A. Request for authorization to advertise for competitive bids for Pier 45 Shed C Fish Processing Facilities Improvements. (Resolution No. 02-27) (Staff report provided to the Commission.)
7. PLANNING & DEVELOPMENT
 - A. Request for approval of a Memorandum of Understanding with Muni to provide and maintain public access improvements on the south side of Islais Creek, as required by the Bay Conservation and Development Commission for the Third Street Light Rail Project. (Resolution No. 02-34) (Staff report provided to the Commission.)

08-22-02P12:19 RCVD

8. REAL ESTATE

- A. Request for authorization to issue Request for Proposals for the renovation, lease and operation of a restaurant at Pier 28-½, formerly known as the Boondocks Restaurant. (Resolution No. 02-35) (Staff report provided to the Commission.)
- B. Request for approval of proposed Second Amendment of Lease No. L-12120, between the Port and Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc., for property located at Pier 38. (Resolution No. 02-36) (Staff report provided to the Commission.)

9. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to all Commissioners for review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

10. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTERS (Discussion and Action Item)

- a. Discuss existing litigation matters pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (2 cases):
 - F. Alioto Company, Inc. et al. v. City and County of San Francisco, et al., San Francisco Superior Court Case No. 318360, filed January 25, 2001. (Discussion and Action Item)
 - Bistro Z et al. v. City and County of San Francisco et al., Superior Court No. 319-566. (Discussion and possible action on proposed settlement agreement between the Port and Bistro Z principals, Sheila Zaki and Seifi Zaki.)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Embarcadero Hotel
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Stanford Hospitality Inc.: Lawrence Lui

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at the Embarcadero.

b. Property: Rincon Park Restaurant Site

Person Negotiating: Port: Byron Rhett, Director of Planning & Development

*Rincon Park Restaurants, LLC: Reed Heaton

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations regarding the Rincon Park Restaurant Site.

c. Property: SWL 301

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*S.P. Tarantino Insurance: Don Tarantino

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 301.

d. Property: SWL 322 (900 Front Street)

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Gerson Bakar & Associates: Gerson Bakar

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations regarding the Port property located at SWL 322.

e. Property: 601 Cesar Chavez

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Pier 80 Inn Restaurant: Derf Butler

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations regarding the Port property located at 601 Cesar Chavez.

11. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

12. ADJOURNMENT

Staff Reports: Explanatory Documents available to the public are posted on the Port's Website at www.sfport.com.

AUGUST/SEPTEMBER 2002
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
August 27	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
September 10	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
September 24	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406 to be placed on the mailing list for Commission meeting agenda. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Person: Kirk Bennett @ 274-0545.

Please note change of meeting date: The Maritime Commerce Advisory Committee (MCAC) *meets every other month on the third Thursday* at 11:30 a.m. in Bayside 1 @ Pier 1. Contact Person: Jill Simpson @ 274-0519. The next meeting is scheduled on September 19, 2002.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:00 to 7:00 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 - 8th Street between Irvin and Hooper. Contact Person: Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact Person: David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Kevin Jensen, ADA Coordinator, at 274-0555. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

August 20, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Pius Lee
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas Wong 
Executive Director

SUBJECT: Approval of First Amendment to Lease No. L-12984 with Baydelta Maritime for portions of Pier 15 (Green Street at The Embarcadero)

DIRECTOR'S RECOMMENDATION: APPROVE AMENDMENT.

Background: Baydelta Maritime operates five tugboats that provide ship assists and tanker escorts in San Francisco Bay. The owners have been Port of San Francisco tenants at Pier 15 since they acquired the company in 1993.

Baydelta provides essential harbor services to the shipping community and approximately 50 jobs to union and administrative personnel. The company's fleet includes four state-of-the-art "tractor" tugs and one conventional tug.

Baydelta's Lease No. L-12984 is valid until November 30, 2010. Due to business expansion, the owners expressed the need to acquire the office space on the first floor of Pier 15 (approximately 1751 square feet), effective August 1, 2002. This space has been leased by the Port on a month-to-month basis to three non-maritime tenants. These tenants were offered and accepted office leases at another Port property (Agriculture Building). The amendment to the Baydelta lease will result in no loss of revenue to the Port at Pier 15.

Baydelta's long-term plan is to expand its own support offices into the first floor area. In the meantime, they intend to sublet this space to Inchcape Shipping Services, a maritime company and a leading steamship agency in the San Francisco Bay Area. The sublease term will be six months (renewable), and the rental rate to Inchcape will be the same as the Port charges to Baydelta (no mark-up).

This Print Covers Calendar Item No. **4A**

KEY TERMS OF LEASE AMENDMENT NO. 1

1. New Premises (all measures are approximate): 385 square feet of shed space (formerly common area) and 1751 square feet of office space, located at Pier 15.
2. Term: Commencing on August 1, 2002, subject to Port Commission approval, and terminating on November 30, 2010, unless earlier terminated in accordance with lease provisions (co-terminus with Lease No. L-12984).
3. Additional Base Rent: \$2285.00 per calendar month. Rate for shed and office rental is within the range of the Maritime Rental Rate Schedule, approved by the Port Commission on June 29, 1999 (Resolution No. 99-49).
4. Permitted Use: Shed storage area and support offices, limited to existing shed and office area for Baydelta Maritime or Port-approved subtenant and for no other purpose.

CONCLUSION

The primary goal of the Port of San Francisco is to promote our maritime industries, such as harbor services companies. Baydelta Maritime, a longtime Port tenant, exemplifies this type of company. They provide tugboat services vital to the San Francisco Bay shipping community, as well as jobs to 26 union employees. Their business is doing well and expanding. Baydelta Maritime is a thriving, water-based firm, an ideal tenant for the Port of San Francisco. The subject lease amendment is mutually beneficial to the tenant and the Port. Therefore, Port staff recommends that the Port Commission approve the lease amendment.

Prepared by: Michael Nerney, Maritime Marketing Representative

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-32

- WHEREAS, Baydelta Maritime operates a modern fleet of five tugboats that provide ship assists and tanker escorts in San Francisco Bay, and
- WHEREAS, The owners of Baydelta Maritime have been tenants of the Port of San Francisco at Pier 15 since they acquired the company in 1993; and
- WHEREAS, Baydelta Maritime employs approximately 50 union and administrative personnel; and
- WHEREAS, Baydelta Maritime requires additional office space at Pier 15 to support its expanding business; now therefore be it
- RESOLVED, That the Port Commission hereby approves the lease amendment dated August 1, 2002, between the Port of San Francisco and Baydelta Maritime for portions of Pier 15 (Green Street at The Embarcadero), and authorizes the Executive Director to execute the Lease Amendment substantially on the terms set forth in the Memorandum to the Port Commissioners for Calendar Item 4A for the August 27, 2002, Port Commission meeting, in such final form as approved by the City Attorney, and to take all such further action as is necessary to implement the intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 27, 2002.

Secretary



MEMORANDUM

August 20, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Pius Lee
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to accept and expend \$500,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for a Port Security Assessment; Authorization to issue a Request for Proposals from qualified vendors.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION AUTHORIZING EXECUTIVE DIRECTOR TO ACCEPT AND EXPEND \$500,000 IN GRANT FUNDS AWARDED TO THE PORT OF SAN FRANCISCO BY THE TRANSPORTATION SECURITY ADMINISTRATION FOR A PORT SECURITY ASSESSMENT; AND TO ISSUE A REQUEST FOR PROPOSALS FROM QUALIFIED VENDORS.

Background: The security of our national seaports, while always a priority, is now at the forefront of scrutiny, in light of the terrorist attacks of September 2001. The Port of San Francisco, with 7½ miles of urban waterfront and a wide array of uses taking place on nearly 1000 acres of property, has unique security responsibilities and needs. Our Port facilities include container and bulk cargo terminals, a cruise ship terminal, ferry and excursion passenger terminals, a major ship repair yard and drydock, layberths for seven Maritime Administration vessels, commercial fishing harbors, a fish processing and distribution center, power plants, the western base of the Bay Bridge, world-renowned tourist attractions, the landmark Ferry Building, Pacific Bell Park, and many other harbor services.

In January, a regional Port Security Committee was formed to discuss security issues affecting San Francisco Bay Area ports and terminals. The group is comprised of representatives from the Coast Guard, Customs, the Port of Oakland, marine terminal operators, and others. Port staff joined this committee from the outset and continues to actively participate.

This Print Covers Calendar Item No. 5A

On February 28, Secretary of Transportation, Norman Mineta, announced the implementation of a new Port Security Grants Program to finance security enhancements at critical national seaports. Congress appropriated \$93.3 million to the Transportation Security Administration for port security assessments and improvements. The program established two categories for grants: (1) security assessments and mitigation strategies and (2) enhanced facility and operational security.

On March 12, Port staff hosted a security briefing with maritime customers, organized labor, and Coast Guard representatives to review the requirements of Terminal Security Guidelines mandated by the Coast Guard. The purpose of the guidelines is to help terminals prevent and respond to security threats, ensure that adequate security measures are in place, assist with training and communication needs, and enable the Coast Guard to efficiently assess security measures.

The week of March 18, the Port's governmental affairs manager traveled to Washington, DC, to meet with Senators Feinstein and Boxer, Representative Pelosi, and the Department of Transportation Administrator to inform them about the unique security concerns of the Port of San Francisco, and to lobby for their support in the grant-funding program.

Currently before Congress are two pieces of legislation pertaining to seaport security: (1) Senate bill 1214, the Port and Maritime Security Act, which authorizes \$390 million for enhanced port security and (2) House bill 3983, the Maritime Transportation Antiterrorism Act of 2002, which sets aside \$75 million a year for the next three years to reimburse ports for security improvements. Port staff and the American Association of Port Authorities are closely monitoring these initiatives.

On March 28, Port staff submitted its application to the Transportation Security Administration for Port Security Grant. The request was for funding to conduct a thorough port security assessment that would enable the Port to evaluate vulnerabilities and identify mitigation strategies for its facilities.

On June 17, Secretary Mineta announced grant awards in the amount of \$92.3 million to 51 ports located throughout the nation to enhance the security of ports and other facilities. The selection board consisted of the Under Secretary of Transportation for Security, the Maritime Administrator, and the Commandant of the Coast Guard, who based awards on consideration of the most urgent needs from a homeland security perspective. The Port of San Francisco was awarded a \$500,000 grant to conduct a port security assessment.

The Port has organized a Port Security Assessment Team, consisting of representatives from all Port departments, to administer the assessment process, as well as manage port security matters.

This Port security assessment will utilize a third-party independent security firm to conduct a comprehensive assessment of Port facilities, procedures, and training to determine any existing vulnerability, to propose mitigation measures, and to develop enhanced security standards that adhere to federal guidelines. The Port is seeking

recommendations as to the adequacy of our fencing, gates, lighting, access-control systems, patrol vessels, and vehicles. The assessment will also include a curriculum for security training, execution, and ongoing performance evaluation.

Port staff is asking the Port Commission today to formally accept this \$500,000 grant from the Transportation Security Administration and to allow Port staff to issue a Request for Proposals (RFP) for professional services that will allow the staff to hire a security consulting firm to provide the foundation and framework for the acquisition and application of new security programs, policies, procedures and technologies.

Commission Action. Port staff recommends that the Port Commission authorize the Executive Director to accept and expend \$500,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for a Port Security Assessment; and to issue a Request for Proposals from qualified vendors.

Prepared by: Peter Dailey, Maritime Director

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-33

- WHEREAS, The Transportation Security Administration, a branch of the Department of Transportation, announced the Port Security Grants Program based on the seaport security provisions contained in the Department of Defense Appropriations Act for Fiscal year 2002 (Public Law 107-117, H.R. Conf. Rpt. 107-350); and
- WHEREAS, The Transportation Security Administration is coordinating the Port Security Grants Program in conjunction with the Maritime Administration and the Coast Guard; and
- WHEREAS, The Transportation Security Administration awarded competitive grants to critical national seaports to finance the cost of enhancing facility and operational security; and
- WHEREAS, Grants were awarded based on the need for security assessments and enhancements as determined by the Under Secretary of Transportation for Security, the Administrator of the Maritime Administration, and the Commandant of the Coast Guard; and
- WHEREAS, The Port of San Francisco applied for and was awarded a Port Security Grant in the amount of \$500,000, in the category of Security Assessments and Mitigation Strategies; now, therefore be it
- RESOLVED, That the San Francisco Port Commission does hereby authorize the Executive Director to accept and expend \$500,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for a Port Security Assessment; and, be it further
- RESOLVED, That the Executive Director shall seek the Board of Supervisor's approval of a Resolution to accept and expend the \$500,000 in grant funds from the federal Transportation Security Administration; and, be it further
- RESOLVED, That the Executive Director is hereby authorized to issue a Request for Proposals from qualified vendors.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 27, 2002.

Secretary



MEMORANDUM

August 19, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to advertise for Competitive Bids for Pier 45 Shed C Fish Processing Facilities Improvements, Construction Contract No. 2674.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF PIER 45 SHED C FISH PROCESSING FACILITIES IMPROVEMENTS, CONTRACT NO. 2674.

A cross-functional Port staff team has been working to complete the design of the new fish processing facilities at Pier 45 Shed C. Staff is now in the process of preparing the final construction documents in anticipation of the bidding the project.

The main components of the program include:

- 1) 45,300 sq. ft. of space to be leased to fish processing businesses;
- 2) 27,600 sq. ft. of corridors and vehicular circulation space within Shed C;
- 3) Improvements to the building exterior and roof;
- 4) Tenant shell spaces with demising walls;
- 5) New raised ramps at the ends of Sheds C and D for wheelchairs and fork lifts;
- 6) Other improvements to comply with the Federal Americans with Disabilities Act and State Title 24 requirements;
- 7) A trash compaction system for solid wastes; and
- 8) Infrastructure improvement stub outs necessary for tenants to develop their demised spaces listed below:
 - a) Water, gas and telecommunication service;
 - b) 480 volt, 3-phase electric service;
 - c) Large capacity sanitary sewers that connect off-site to the City sanitary sewer system under Taylor Street and Jefferson Streets.

This Print Covers Calendar Item No. 6A

Employee parking for fish processing businesses in Pier 45 Shed C will be offered between 4:00 am to noon in the Triangle Parking Lot (bounded by The Embarcadero, and Jefferson and Taylor Streets).

In conjunction with this project, the parking adjacent to Sheds B and D will be restriped by Port staff to accommodate an angled layout to better manage vehicular flows and emergency pedestrian egress. Port staff will also be modifying the loading docks on Sheds B and D to accommodate this new parking layout.

Port staff has continued to work with the community on the design and implementation of this project. We will be coordinating work with the seasonal fishing schedules to minimize impacts to the fish processors on the pier.

The budget for the improvements includes \$4,450,000 from Port capital funds and a \$1,500,000 state grant for a total project budget of \$5,950,000.

We anticipate advertising for bids in early September with construction to begin in December of this year. As the construction documents are nearly complete, Port staff requests authorization from the Commission to advertise for construction bids for this project.

Prepared by: Tom Trimbur, Project Manager,
for Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-27

WHEREAS, on June 24, 1997 (by Resolution No. 97-50), the Port Commission adopted the Waterfront Land Use Plan, which included as its first objective for the Fisherman's Wharf Waterfront: "Restore and expand Fisherman's Wharf as a working fishing port."; and

WHEREAS, on October 14, 1997 (by Resolution No. 97-83), the Port Commission adopted guidelines regarding long term uses for Pier 45 Sheds A and C, which stated that "Shed C to be reserved for fishing industry uses including fish processing and wholesaling, truck access, storage, and employee parking."; and

WHEREAS, on November 9, 2000 (by Resolution No. 00-87), the Port Commission (1) established the Pier 45 Shed C project as a top priority for funding in the Port's 2001-02 FY Capital Plan, (2) authorized and directed Port staff to immediately commence the planning, design and engineering of improvements for fishing industry uses in Pier 45 Shed C, and (3) directed Port staff to pursue grant funding for the Pier 45 Shed C Project; and

WHEREAS, On February 27, 2001 (by Resolution No. 01-10), the Port Commission approved the Port's 2001-02 FY Capital Plan, which included \$4,450,000 of total funding for the Pier 45 Shed C project; and

WHEREAS, On December 11, 2001 (by Resolution No. 01-95), the Port Commission (1) approved the Schematic Design Plan for the Pier 45 Shed C Project, (2) adopted the environmental review and project approval findings, and (3) authorized the Port to apply for, accept and expend funds from the California Technology Trade and Commerce Agency and to enter into a funding agreement with the State; and now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to advertise for competitive bids to construct Pier 45 Shed C Fish Processing Facilities Improvements.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 27, 2002.

Secretary



MEMORANDUM

August 22, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Memorandum of Understanding with MUNI for Public Access
Improvements Adjacent to Islais Creek Required for the Third Street Light
Rail Project

RECOMMENDATION: Approve Resolution Adopting the MOU

MUNI is proceeding with the Third Street Light Rail project, which involves the construction of tracks and facilities to extend MUNI Metro light rail service from Mission Bay south along Third Street to the Bayview Hunters Point community. As part of this major project, the 4th Street Bridge crossing China Basin Channel, and Levon Hagoop Nishkian Bridge along Third Street (Nishkian Bridge), crossing Islais Creek, require seismic retrofit and improvements to enable light rail service, which requires a permit from the San Francisco Bay Conservation and Development Commission (BCDC).

MUNI has secured a BCDC permit for this work, and has agreed to provide public access on Port property as a condition of the permit. The public access area is located on the south side of Islais Creek, adjacent to the east side of the Nishkian Bridge. The site is paved area that has been improved in the past as public access pursuant to an earlier BCDC permit. Under its BCDC permit MUNI will install new landscaping, furniture and fixtures, and provide all required maintenance of the improved area.

This Print Covers Calendar Item No. 7A

A Memorandum of Understanding (MOU) has been signed between the Port and MUNI which documents the improvements and maintenance responsibilities that MUNI will undertake as part of its implementation of the Third Street Light Rail project. The MOU requires MUNI to bear full responsibility for all construction and maintenance requirements of the BCDC permit, and requires MUNI to be responsible for any claims or losses to the Port resulting from MUNI's activities at the site. A copy of the proposed MOU is attached to this memorandum. The MOU requires Commission approval to become effective.

Prepared by: Diane Oshima
Assistant Deputy Director
Planning & Development

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (herein "MOU") dated hereof for reference purposes only as of _____, 2002, is entered into by and between the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco (the "Muni"), and the San Francisco Port Commission, an agency of the City and County of San Francisco ("Port").

RECITALS

A. Under the Burton Act (Stats. 1968 Ch. 1333), the State of California transferred to the City and County of San Francisco (the "City"), to be held by the Port, certain property including that certain public access area overlooking Islais Creek, as more particularly shown on Exhibit A attached hereto and made a part hereof (the "Property").

B. Muni is constructing the Third Street Light Rail Project (the "Project"), which will provide additional public transportation along Third Street through the Mission Bay and Central Waterfront areas. Muni has obtained Permit No. M02-12, dated April 22, 2002, from the San Francisco Bay Conservation and Development Commission ("BCDC") for certain work related to the Project (the "Permit"), which is attached hereto as Exhibit B and made a part hereof. The Permit allows Muni and the City's Department of Public Works to perform work in San Francisco Bay and within the 100-foot shoreline band at the 4th Street Bridge over Mission Creek and at the 3rd Street Bridge over Islais Creek. The Permit requires certain improvements to the Property as mitigation for the work (the "Improvements"), and Muni has agreed to perform the Improvements and to assume responsibility for maintaining them.

C. The parties now wish to enter into this MOU to set forth the conditions under which Muni will use the Property.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Property.** The Port hereby gives Muni the right to enter and use the Property as set forth herein.
3. **Effective Date.** The effective date of this agreement ("Effective Date") shall be _____, 2002.

4. **Term.** The term of this Agreement ("Term") shall commence on the Effective Date and shall continue until the earlier of termination of the Permit or the date that is sixty-six (66) years after the Effective Date (the "Expiration Date").

5. **Permitted Uses.** Muni may enter and use the Property to construct, install, maintain, replace, repair or remove Improvements required under the Permit, as more particularly described therein. Muni shall obtain all permits, licenses and approvals of any regulatory agencies, including without limitation, Port building permits, required to commence and complete the construction of the Improvements. Muni shall be responsible for all costs of construction and maintenance of the Improvements. Upon notice to Port, Muni may assign its maintenance obligations to another City department. Muni shall provide Port with reasonable advance written notice prior to performing work involving excavation, new construction or other work that would reasonably be anticipated to interfere with the Port or its tenants, or materially alter the condition of the Property. Muni shall use reasonable efforts to minimize interference with the activities and tenancies of Port, its tenants, and their respective invitees. Muni will use reasonable diligence to minimize the interference any such work may cause with the activities of Port, its tenants, and their respective Invitees.. Any damage to Port property caused by installation, maintenance, repair or any other activity of Muni permitted hereunder shall be repaired and restored to its prior condition upon completion of the installation, maintenance, repair or other activities at no cost to Port

6. **Restrictions on Use; Compliance with Law.** Muni shall not use the Property, or any part thereof, for any purposes other than those set forth in Paragraph 5 of this MOU. Muni, at Muni's expense, shall comply with all laws, regulations and requirements of Federal, state, county and municipal authorities, now in force or which may hereafter be in force, including laws relating to Hazardous Materials, which impose any duty upon Muni with respect to Muni's use or alteration of the Property permitted hereunder, including compliance with the Permit. As used in this MOU, "Hazardous Materials" shall mean any substance, water or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety or property.

7. **Regulatory Approvals.** Muni shall be solely responsible for obtaining all required authorizations, approvals or permits required by any governmental agency having jurisdiction over the Property, including, but not limited to, BCDC, Regional Water Quality Board, and the Army Corps of Engineers (collectively, "Regulatory Approvals") as further provided in this Section. In any instance where Port will be required to act as a co-permittee, Muni shall not apply for any Regulatory Approvals without first obtaining the approval of Port, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Muni shall consult and coordinate with Port in Muni's efforts to obtain such Regulatory Approval, and Port shall cooperate reasonably with Muni in its efforts to obtain such Regulatory Approval, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses. Muni shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a

permit from any other regulatory agency than Port, if Port is required to be a co-permittee under such permit or the conditions or restrictions could create any substantial or material obligations (as determined by the Port in its reasonable discretion) on the part of Port whether on or off the Property, unless in each instance Port has previously approved such conditions in writing in Port's sole and absolute discretion. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Muni. Muni shall be responsible for complying, at no cost to Port, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. Muni shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Muni to comply with the terms and conditions of any Regulatory Approval and Port shall have no liability for such fines and penalties except to the extent that such failure results solely from the willful misconduct or gross negligence of Port.

8. Non-Interference. Port shall have the right to use and enjoy the Property except when such use interferes with use of the Property for landscaping in accordance with the BCDC Permit.

9. Damages. It is the understanding of the parties that Port shall not expend any funds due to or in connection with Muni's use of the Property. Therefore, Muni agree to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Property by Muni, its agents or invitees, and its contractor's assignees or subcontractors, (ii) out of any injury or death of any person or damage of any property occurring in, on or about the Property which arises as a result of Muni's, or its agents' or invitees', and its contractor's assignees' or subcontractors', act or omission; or (iii) out of any failure by Muni to comply with the terms of this MOU, including, without limitation, compliance with all laws and Regulatory Approvals. The foregoing obligation of Muni shall survive the termination of this MOU.

10. Insurance. Muni shall require any contractor or subcontractor it hires in connection with its use of the Property, to include the Port as an indemnified party in any indemnification provision between Muni and any agent, contractor or subcontractor it hires in connection with its use of the Property, and require such agent, contractor or subcontractor to secure such insurance as is recommended by the City Risk Manager and approved by Port. The San Francisco Port Commission, and its officers, directors, employees and agents shall be included as an additional insureds in any such insurance.

11. Notices. All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and Muni as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to Port to:

Director of Real Estate
San Francisco Port Commission
Pier 1

10/1/77

Dear Mr. [Name],
I am writing to you regarding the [Topic] which was discussed at the [Meeting] on [Date].
The [Topic] is of great importance to the [Organization] and we are very interested in your [Response].
We have received your letter of [Date] and are grateful for the information you have provided.
We are currently reviewing the [Information] and will contact you again once a decision has been reached.
Thank you for your cooperation and assistance.

Sincerely,
[Signature]

[Name]
[Title]
[Organization]
[Address]
[City]
[State]
[Zip]

Enclosed for you are [Number] copies of the [Document].
If you have any questions or need further information, please contact me at [Phone Number].
Thank you for your attention to this matter.

Very truly yours,
[Signature]

[Name]
[Title]
[Organization]

San Francisco, CA 94111

and if to Muni to:

Manager of Real Estate
Attention: Kerstin Magary
Capital Planning and Legislative Affairs
Municipal Transportation Agency -- Muni
1145 Market Street, 3rd Floor
San Francisco, CA 94103-1547

or such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Paragraph.

12. **Cooperation.** Subject to the terms and conditions of this MOU, the Port agrees to use its best efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU and Muni's use of the Property contemplated hereby as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first written above.

AGREED TO AS WRITTEN ABOVE:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation operating by and through
THE SAN FRANCISCO PORT
COMMISSION

By: _____
DOUGLAS F. WONG
Executive Director

Date: _____
Resolution No.: _____

AGREED TO AS WRITTEN ABOVE:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation operating by and through
THE MUNICIPAL
TRANSPORTATION AGENCY

By: _____
MICHAEL T. BURNS
Director of Transportation

Date: _____

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-34

WHEREAS, MUNI has begun the construction of the Third Street Light Rail Project, extending MUNI Metro public transit from Mission Bay to the Bayview Hunters Point community via Third Street; and

WHEREAS, The Third Street Light Rail Project requires seismic retrofit and improvements to the Fourth Street Bridge over China Basin Channel, and the Levon Hagoop Nishkian Bridge along Third Street over Islais Creek, which work requires a permit from the San Francisco Bay Conservation and Development Commission (BCDC); and

WHEREAS, MUNI has secured the BCDC permit for this work, which requires public access improvements on Port property located on the south side of Islais Creek, east of the Nishkian Bridge and next to the parking lot of the San Francisco Fire Station, and maintenance of those improvements; and

WHEREAS, The Port and MUNI have signed a Memorandum of Understanding (MOU), a copy of which is on file with the Secretary for the Commission, which sets forth the landscaping improvements and maintenance obligations that will be MUNI's responsibility as part of implementation of the Third Street Light Rail project; now therefore be it

RESOLVED, The Port Commission approves the MOU for the public access improvements on Port property to be carried out by MUNI as part of implementing the Third Street Light Rail project.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 27, 2002.

Secretary



MEMORANDUM

August 22, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas Wong
Executive Director 

SUBJECT: Authorization to issue Request for Proposals (RFP) for the renovation, lease and operation of a restaurant site at Pier 28½, formerly known as the Boondocks Restaurant.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

BACKGROUND

The restaurant site located at Pier 28 ½, formerly known as the Boondocks Restaurant, is a free standing building consisting of approximately 2,225 square feet of interior space [see Exhibit A (the "Restaurant Site")]. The building was most recently operated as a restaurant by J. Kennedy, Inc. under Port Lease No. L-11821.

Port Commission policy requires vacant retail leasing opportunities to be competitively bid unless impractical or impossible. Additionally, pursuant to the San Francisco Administrative Code Sections 2.110 and 9.118, any lease with a term of ten or more years, or any lease having anticipated revenue to the Port of one million dollars or more requires approval by the Board of Supervisors.

In compliance with these policies, Port staff proposes to solicit proposals from qualified restaurant operators for the design and renovation of the existing building and operation of a new restaurant at Pier 28½. Selection of a restaurant operator and approval of the required lease will be subject to future Port Commission action.

THIS PRINT COVERS CALENDAR ITEM NO. 8A



THE HISTORY

OF THE
CITY OF
NEW YORK
FROM
THE
FIRST
SETTLEMENT
TO
THE
PRESENT
TIME

BY
JOHN
B. HENRY

NEW YORK
PUBLISHED BY
JOHN B. HENRY
1850

NEW YORK
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PROJECT OBJECTIVES

The re-development of the Restaurant should address the following objectives:

1. Provide a high quality casual dining restaurant with on-premises dining to serve the Rincon/South Beach community and the larger San Francisco and Bay Area community.
2. Provide for a physical renovation of a currently vacant facility.
3. Maximize Port revenue from the site.
4. Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan.

PROPOSED RENT AND KEY LEASE TERMS

The actual terms of the lease will be negotiated with Port Staff and will be subject to final approval by the Port Commission and, possibly, the San Francisco Board of Supervisors.

Base Rent

A minimum base monthly rental rate will not be set in the RFP. Instead, the Port will require Respondents to propose a base monthly rate that is comparable to or exceeds market rates for similarly situated restaurant on the San Francisco waterfront comparable class, size and use. Periodic adjustments of base rent must also be proposed comparable to market rates for similarly situated restaurants on San Francisco waterfront of comparable class, size and use.

Percentage Rent

Proposals must also include a Percentage Rent payable to the Port on gross receipts for food, beverages and merchandise. The percentage rent rate should be comparable or exceed market rates for similarly situated restaurants on San Francisco waterfront of comparable class, size and use, with a minimum rate of 6½% of gross receipts for on-premises sites of food, beverages and merchandise.

The higher of the Base Rent or the Percentage Rent would be payable to the Port. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable to the Port.

Term

The initial term of the lease should not exceed 10 years.

Deposit

Respondents will be required to submit an earnest money deposit of Ten Thousand Dollars (\$10,000) along with responses to the RFP. The deposit of the successful respondent, if any, will become non-refundable upon entering into exclusive negotiation.

Sale/Transfer/Refinancing

The Port expects to participate in the proceeds that the tenant receives from the sale, transfer or refinancing of the leasehold.

Maintenance/Repairs

During the term of the lease, the tenant shall be responsible for all improvements, maintenance, repairs and operating expenses associated with the Site, including any non-exclusive areas, and the substructure.

SELECTION

Port staff would issue a RFP package consistent with standards set by prior Port RFP's. The package would include a site map, a narrative description of the opportunity, environs, site, Port development objectives, design review and other required regulatory approvals, lease parameters, selection criteria, process and schedule and submittal requirements.

Proposals submitted to the Port would be analyzed to select the most qualified respondent. Selection criteria would include: the experience and reputation of the respondent, the quality of the development concept, the financial viability of the proposal, economic return to the Port and the respondent's demonstrated ability to finance, design, construct and operate a restaurant at the proposed site. Port staff would then negotiate a lease with the selected respondent utilizing the Port's standard lease format. The earnest money deposits will be returned to the bidders not selected.

PROJECTED RFP SCHEDULE

Port Commission Authorization to Issue RFP:	August 27, 2002
Issue RFP:	September 1, 2002
Site Tour for prospective Bidders:	September 17, 2002
Submittal Deadline:	October 15, 2002
Selection of bidder and Lease Negotiations:	November 1, 2002
Port Commission Approval of Lease(est)	December 15, 2002
Board of Supervisors' Approval of Lease (est)	January 15, 2003

ECONOMICALLY DISADVANTAGED BUSINESS PARTICIPATION

The Port Commission is interested in encouraging the participation of minority-owned and economically disadvantaged businesses in this RFP opportunity. Staff will consult with the Human Rights Commission and the City Attorney's Office to determine appropriate methods for encouraging participation in the RFP process by small, local, women, economically disadvantaged and minority owned businesses.

The successful respondent will be encouraged to expend not less than 30% of the construction costs for tenant improvements for the benefit of bona fide MBE, WBE, or DBE Enterprises Certified by the San Francisco Human Right Commission (HRC).

COMMISSION AND BOARD OF SUPERVISORS APPROVAL

The final lease will be presented to the Port Commission and (depending on the term or projected revenue) pursuant to Charter Sections 2.110, 9.118(c) and to the Board of Supervisors of the City and County of San Francisco for approval.

RECOMMENDATION

Port staff recommends that the Commission approve the attached resolution authorizing staff to prepare and offer, through the RFP process, a lease for the renovation and operation of a restaurant located at Pier 28½.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-35

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control and lands within Port jurisdiction; and
- WHEREAS, the Port owns an approximately 2,225 square foot restaurant building located at Pier 28½, formerly known as the Boondocks Restaurant (the "Restaurant Site"); and
- WHEREAS, the Restaurant Site is currently vacant and in need of renovation; and
- WHEREAS, there is demand for a waterfront restaurant in the vicinity of the Restaurant Site to serve the Rincon/South Beach community and the larger San Francisco and Bay Area community; and
- WHEREAS, Port Commission policy encourages competitive bidding for retail opportunities unless impractical or impossible; and
- WHEREAS, the Port Commission now wishes to proceed with the renovation and lease of the Restaurant Site; therefore, be it
- RESOLVED, that the Port Commission authorizes staff to offer the opportunity for the renovation, lease and operation of the restaurant facility located at Pier 28½ formerly known as the Boondocks Restaurant, through a request for proposals and qualifications (RFP) process consistent with industry standards with the terms set forth in the Agenda Summary for this Item 8A, a copy of which is on file with the Port Commission Secretary.

I hereby certify that the Port Commission at its meeting of August 27, 2002 adopted the foregoing Resolution.

Secretary

THE HISTORY OF THE CITY OF BOSTON FROM 1630 TO 1800

1630	First settlement of Boston by Puritans	1634	First public school established
1639	First town meeting held	1643	First public library established
1650	First public hospital established	1656	First public prison established
1660	First public workhouse established	1664	First public almshouse established
1670	First public school of arts and sciences established	1675	First public hospital of the poor established
1680	First public workhouse of the poor established	1685	First public almshouse of the poor established
1690	First public school of the poor established	1695	First public hospital of the poor of the poor established
1700	First public workhouse of the poor of the poor established	1705	First public almshouse of the poor of the poor established
1710	First public school of the poor of the poor established	1715	First public hospital of the poor of the poor of the poor established
1720	First public workhouse of the poor of the poor of the poor established	1725	First public almshouse of the poor of the poor of the poor of the poor established
1730	First public school of the poor of the poor of the poor of the poor established	1735	First public hospital of the poor of the poor of the poor of the poor of the poor established
1740	First public workhouse of the poor of the poor of the poor of the poor of the poor established	1745	First public almshouse of the poor of the poor of the poor of the poor of the poor of the poor established
1750	First public school of the poor of the poor of the poor of the poor of the poor of the poor established	1755	First public hospital of the poor of the poor of the poor of the poor of the poor of the poor of the poor established
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THE HISTORY OF THE CITY OF BOSTON FROM 1630 TO 1800



MEMORANDUM

August 20, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Proposed Second Amendment of Lease No. L-12120, as amended by the First Amendment (collectively, the "Lease"), between the Port and Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc., a California corporation, jointly and severally ("MRC") for property located at Pier 38 incorporating following changes: (a) expansion of permitted uses to include permanent in-water berthing, subject to certain conditions; (b) expansion of demised water surface premises; and (c) revision of floating dock configuration. (Resolution 02-36)

DIRECTOR'S RECOMMENDATION: ADOPT RESOLUTION 02-36 APPROVING PROPOSED SECOND AMENDMENT TO LEASE NO. L-12120

LEASE BACKGROUND

Pursuant to Lease No. 12120, MRC leased from the Port the entirety of Pier 38 consisting of approximately 68,000 square feet of Shed Space, 28,000 square feet of Apron Space, 7,800 square feet of Pier Bulkhead Office Space and 180,000 square feet of water surface area for use as a maritime recreation center. Lease No. 12120 was approved by the Port Commission on August 29, 1995 (Resolution 95-70) and by the Board of Supervisors. The parties subsequently entered into a First Amendment to Lease No. 12120 to revise the description of the Premises.

The Lease provides that MRC may use the Premises, among other uses, for transient berthing for periods of up to 72 hours. The Site Plan attached to the Lease as Exhibit A provides that MRC may build up to 2700 lineal feet of floating dock for the berthing of such transient vessels.

This Print Covers Calendar Item No. **8B**

BCDC PUBLIC ACCESS OBLIGATIONS

As a condition of approval for the Lease in 1995, the Bay Conservation and Development Commission (herein "BCDC") required the Port and MRC, as co-applicants, to provide public access along the entire perimeter of Pier 38. With respect to this requirement, the Port is responsible for upgrading the substructure that physically supports the public access area of Pier 38 while MRC is responsible for the public access improvements that sit atop the substructure, namely a new walking surface, railings, lighting and seating areas. To date, the Port has completed the first phase of the substructure and is working with MRC and BCDC to schedule the remaining work.

To fund its cost of the public access improvement obligations, MRC has applied for a loan from the California Department of Boating and Waterways ("Cal DBAW"). In order to qualify for this loan, Cal DBAW has required MRC to develop a reliable revenue stream.

PROPOSED AMENDMENT

MRC has requested that the Port expand the list of permissible uses in the Lease to include permanent in-water vessel berthing. As stated during its open-session presentation at the July 23, 2002 Port Commission meeting, MRC projects a strong market demand for permanent berthing in San Francisco, especially in the mega-yacht market. The proposed change will allow MRC to cater to this demand and thereby increase overall revenues. Also, servicing permanently berthed vessels, as compared to transient berthing, will provide MRC a more reliable revenue stream than it currently generates from transient berthing alone.

The enhanced revenue stream produced by meeting the demand for permanent berthing will satisfy Cal DBAW's funding requirements and allow MRC to fund its BCDC public access obligations under the Lease. In a telephone conversation on August 20, 2002, Cal DBAW's Contract Administrator for Local Assistance Programs, Mr. Harold Flood, stated that the \$1.3M loan his agency has approved for MRC will be fully funded upon receipt of an approved lease amendment granting MRC the ability to permanently berth vessels.

In addition to expanding the permitted uses under the Lease, MRC has requested that the Port expand the Premises to include an expanded water area as well as revising the floating dock configuration. These changes will allow MRC to accommodate more vessels at Pier 38, thereby potentially increasing the revenue generated from permanent and transient berths and the public utilization of the water area at Pier 38. The changes will be reflected in a revised Site Plan. The revised Site Plan is subject to final approval from CalDBAW and the Port Engineering Department.

STAFF ANALYSIS OF PROPOSED AMENDMENT AND RECOMMENDATIONS

As part of its proposal, Tenant agrees to pay Port, in addition to Base Rent, percentage rent in the amount by which seven percent (7%) of permanent in-water vessel berthing gross receipts received during each calendar month exceeds eighty percent (80%) of the base rent. This

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has evolved through various stages of development. The early years were marked by exploration and settlement, followed by a period of rapid expansion and industrialization. The American Revolution and the Civil War were pivotal moments in the nation's history, shaping its identity and values. The 20th century brought significant social and political changes, including the rise of the American Dream and the challenges of the Cold War. Today, the United States continues to evolve, facing new challenges and opportunities in the global landscape.

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will significantly increase the total revenue to the Port from this Lease once the CalDBWA approved improvements are operational. Projected revenue increases are based on the rental of available slips and subject to the variables of a market economy. However, based on current demand projections, all slips will be rented within two years of their availability with corresponding increases in percentage rent payments to the Port.

The Port's Finance Department has reviewed MRC's financial statements for fiscal year end 2000 and has found that the projected revenues from vessel berthing and other lease income are attainable. Further, the Port's financial analysis notes that, based on current expenses before debt service, MRC should be able to cover the debt service of the existing and new loan.

Port staff has determined that in order to limit and address potential impacts on Port operations arising from the expanded uses of permanent in-water vessel berthing, and to maintain reasonable control over activities on Port property, the requested changes in use should be subject to certain reasonable conditions. Such conditions include the following:

1. All revenues derived from permanent in-water vessel berthing use occurring on the Premises shall be included in the calculation of percentage rent such that Tenant agrees to pay Port, in addition to Base rent, the amount by which seven percent (7%) of permanent in-water vessel berthing gross receipts received during each calendar month, aggregated with all "Other Sales and Rental Receipts" as defined in Section 5.3 (a) of the Lease, exceeds eighty percent (80%) of the Base Rent.
2. Tenant shall utilize not more than 75% of the total number of in-water berths for permanent in-water vessel berthing.
3. Tenant acknowledges that there shall be no live-aboards on any vessel berthed at the Premises. Live-aboards is defined as a person utilizing the vessel as a permanent residence. Live-aboards do not include bonafide crewmembers regularly employed in the maintenance and care of their respective vessel.

Prepared by: Phil Williamson, Senior Property Manager

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**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-36

- WHEREAS, Charter Section B3.581 empowers the Port commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Pursuant to Port Commission approval on August 29, 1999 (Resolution 95-70), the Port entered into Lease No. 12120 ("Lease") with Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. (collectively, "MRC") for occupancy and use of Pier 38 (the "Premises"). The Board of Supervisors also approved Lease No. 12120; and
- WHEREAS, MRC and the Port entered into a First Amendment to Lease No. 12120 dated March 26, 1997 to modifying the description of the Premises (as amended, the "Lease").
- WHEREAS, Under Sections 1.8 and 8.1 of the Lease, MRC may use the Premises as a maritime recreation center, limited to visiting boat docks and moorings, including perimeter floats providing transient berthing for not more than 72 hours per visit and other maritime recreational uses specified therein; and
- WHEREAS, MRC believes there is a strong demand for permanent in-water vessel berthing in San Francisco on a year round basis and has requested the Port to amend the Lease to allow such a use of the Premises; and
- WHEREAS, MRC has further requested that the Port replace the Site Plan referenced as Exhibit A in the Lease with a revised Site Plan which expands the size of the Premises' water area and revises the configuration of the floating dock; and
- WHEREAS, Staff has analyzed MRC's requests and has determined that the proposed amendments will enable MRC to service a larger number of vessels at the Premises and to generate a higher, more reliable revenue stream. This revenue stream, in turn, will enable MRC to meet its public access obligations under the Lease and to provide the Port with increased rental revenues.

- WHEREAS, Staff recommends that the Port Commission grant MRC's requests, subject to certain conditions of approval set forth in the Staff Memorandum to the Port Commission dated August 20, 2002 for Agenda Item Number 8B (the "Staff Memorandum"), by approving the Second Amendment to Lease No. 12120 substantially in the form on file with the Commission Secretary; NOW THEREFORE BE IT
- RESOLVED, Based on Staff's recommendation and its own analysis, the Port Commission hereby finds that (a) there is an existing demand in San Francisco for permanent in-water berthing facilities; (b) the amendments to the Lease as proposed by MRC are necessary to enable MRC to service such demand; and (c) the proposed amendments will have a net positive impact on both MRC's and the Port's revenues.
- RESOLVED, That the Port Commission hereby approves the amendments requested by MRC, subject to the conditions of approval described in the Staff Memorandum and attached hereto as Exhibit A, and authorizes the Executive Director, or his designee, to negotiate and enter into the Second Amendment to Lease No. 12120, in a form that is approved by the City Attorney's Office; and be it further
- RESOLVED, That the Port Commission hereby authorizes the Executive Director, or his designee, to take all such further action as is required to implement the intent of this Resolution, including executing such further assurances and documents in such form as may be approved by the City Attorney's Office to the extent that the potential liability or obligations of the Port are not materially increased from that described in the Staff Memorandum.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 27, 2002.

Secretary

EXHIBIT A

Conditions to Port Approval of Second Amendment to Lease No. 12120 (Attachment to Port Commission Resolution No. 02-36)

The following are the terms and conditions under which the Port Commission has conditioned its approval of the Second Amendment to Lease No. L-12120. These terms and conditions shall be reflected in such Second Amendment. Capitalized terms not defined herein shall have the meanings ascribed to them in Lease No. L-12120, as amended.

1. All revenues derived from permanent in-water vessel berthing use occurring on the Premises shall be included in the calculation of percentage rent such that Tenant agrees to pay Port, in addition to Base rent, the amount by which seven percent (7%) of permanent in-water vessel berthing gross receipts received during each calendar month, aggregated with all "Other Sales and Rental Receipts" as defined in Section 5.3 (a) of the Lease, exceeds eighty percent (80%) of the Base Rent.
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DOCUMENTS DEPT.

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SAN FRANCISCO PORT COMMISSION

AUGUST 27, 2002 MINUTES OF THE REGULAR MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE McCARTHY
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO

PORT COMMISSION

MINUTES OF THE MEETING AUGUST 27, 2002

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:02 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy, Brian McWilliams, and Pius Lee.

2. APPROVAL OF MINUTES - July 9, 2002 Regular Meeting

ACTION: Commissioner Lee moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor. The minutes of the July 9, 2002 were adopted.

3. EXECUTIVE

A. Executive Director's Report:

- Real Estate Director – Mr. Wong introduced Ken Winters, the new Real Estate Director. Mr. Winters already has made a tremendous impact during the few weeks he's been at the Port and has proven to be a great addition to the Port.
- \$200,000 Grant from the Wildlife Conservation Board - Ferry Terminal Public Pier - The Port of San Francisco recently received a \$200,000 grant from the Wildlife Conservation Board for the Ferry Terminal Public Pier Project, which completes the financing required for this exciting \$1,450,000 project. The Public Pier will transform an existing breakwater, built to protect the southern berths at the Downtown Ferry Terminal, into a 600-foot public access fishing and recreation pier. Pedestrian improvements will include an attractive metal railing, lights, benches, and interpretive signage about the Bay ecology and adjacent ferry activities. The Public Pier is expected to become a major destination along The Embarcadero Promenade and the 400-mile San Francisco Bay Trail. The Port's current schedule is to complete final design drawings by the end of September, request bids and approve a contract by mid-January 2003, and complete construction by early summer 2003.
- USS McCampbell
The Navy's newest vessel, USS McCampbell, a guided missile destroyer, was commissioned at San Francisco on August 17th at Pier 30/32 in front of an invited crowd of 4000. The traditional naval ceremony featured remarks by San Francisco Mayor Willie Brown and former Secretary of State Madeleine Albright, the ship's sponsor. The ship was named for the late Captain David McCampbell, the leading Navy ace pilot of all time, who won the Medal of Honor in World War II. The 510-

foot McCampbell was built in Maine and has a crew of 335 sailors. The ship sailed for San Diego on August 19th. The commanding officer, Mark Montgomery, said he and his crew are most grateful for the hospitality extended to USS McCampbell during her commissioning week and hopes the ship will be able to visit San Francisco again in the near future.

- Tall Ships 2002

The biggest fleet of tall ships to sail into San Francisco Bay in decades will parade under the Golden Gate Bridge around noon on Wednesday, August 28th. Dozens of local and international tall ships and historic vessels will participate in this spectacular six-day event on the waterfront from August 28th through September 2nd. Various ships will be docked and open for public tours at berths from Hyde Street Harbor to Pier 40.

- Security Grant & RFP for Security Consultant

The Federal Government awarded security grants to different US ports and airports around the country. The Port received \$500,000 in grant funds.

4. CONSENT

- A. Request for approval of First Amendment to Lease No. L-12984 with Baydelta Maritime for portions of Pier 15 (Green Street at The Embarcadero). (Resolution No. 02-32)

ACTION: Commissioner McCarthy moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-32 was adopted.

5. MARITIME

- A. Request for authorization to accept and expend \$500,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for a Port Security Assessment; and for authorization to issue a Request for Proposals from qualified vendors. (Resolution No. 02-33)

Mr. Peter Dailey, Maritime Director, indicated that the security of our national seaports, while always a priority, is now at the forefront of scrutiny in light of the events of September 2001. The Port has unique security responsibilities and needs. It is a port located in a unique environment with wide array of uses from container to bulk cargo terminals, cruise ship terminals, ferry excursion terminals, major ship repair yard and drydock with a layberth for seven maritime administration vessels, a commercial fishing harbor, distribution centers, power plants and world-famous tourist attractions and icons such as the Ferry Building and PacBell Park. The Port, in the last year, has taken several steps towards dealing with new security needs. Port staff joined a Regional Port Security Committee with other bay area ports that has monthly meetings with US Coast Guard, US Customs Service to discuss areas of mutual concern. Port staff continues to meet with the US Coast Guard, Port of Oakland and other bay area ports. The Port hosted a security briefing with the US Coast Guard with key Port tenants to discuss terminal security guidelines. Members of Local 75 (ILWU) were also invited to join the meeting. The Port

has enhanced security at Pier 35. Police presence during cruise ship days has significantly increased. The USCG restricted access to the terminal similar to the airport. The terminal baggage screening equipment has been increased and all luggages are screened and X-rayed before going into the vessels. At Pier 80, security has been enhanced with more secured fences, improved gates and access has been significantly tight. Other efforts that Port staff has undertaken in recent months have been with government contacts. In February, Port staff was asked to testify to the California State Assembly Committee on port security infrastructure needs. He and Taline Sanassarian testified with other CA ports. In March, Ms. Sanassarian met with congressional representatives in Washington, D.C. regarding security needs and funding opportunities. In August, Executive Director Doug Wong met with Admiral Loy, Head of the Transportation Security Administration, to discuss the Port's security needs. On June 17th, Secretary Mineta announced grant awards in the amount of \$93.3 million to 51 ports located throughout the nation to enhance the security of ports and facilities. The selection board consisted of Under Secretary of Transportation for Security, the Maritime Administrator and Commandant of the US Coast Guard. They based award on consideration from the most urgent needs from a homeland security perspective. The Port applied for \$500,000 grant to fund a professional port security assessment. In June, Secretary Mineta announced the grant awards and the Port of San Francisco was one of 51 ports nationwide to be awarded such a grant. Congress House Bill 3983 and Senate Bill 1214 have passed the various houses in Congress. The committees are meeting next week to mesh the two bills. These bills, when they are passed and signed into law this fall, will have mandates for port security for all US ports. They will include security protocols and infrastructure mandates. It is also expected that there will be some funding mechanisms built into these bills which will allow funding of the security enhancements. One of the requirements of the federal government was an assessment be done of all US ports to determine professionally what the security needs of each individual port would be. A one-size-fits-all approach does not work; every port has its unique needs. It was suggested that the Port hire an independent third party expert to conduct a comprehensive assessment of the facilities, procedures and training to determine existing vulnerabilities. Specific areas of concern are the adequacy of the Port's fencing, gates, lighting, access-control systems and patrol vessels and vehicles.

Port staff intends to hire a consulting company with experience in ports and airports to provide deliverables in the study that will include the following:

- Ongoing reports covering critical exposure upon discovery.
- Port compliance with applicable guidelines.
- Outline of security "Best Practices."
- Tactical & strategic recommendations.
- Implementation cost estimates.
- Recommended pilot projects.
- Staffing & reporting recommendations.
- Training programs & curriculum.

Port staff has formulated an inter-departmental team to create the RFP and work through the security assessment. Mr. Dailey requested permission from the Port Commission to create and distribute the Security Assessment RFP. Once proposals have been evaluated,

staff intends to return to the Commission with a recommended vendor. Staff anticipates that that seaport security bill will be passed by Congress in the spring of 2003 and funds will be available to fund security implementation activities.

Since some of the problems have already been identified, Commissioner Lee asked if the Port could use some of the money to take care of those problems. He wanted to ensure that all the funds would not be used to pay the consultant fees.

Mr. Dailey indicated that staff asked the Federal Transportation Security Administration the same question. The FTSA indicated that the money could be used to fund pilot projects where new types of technology can be purchased such as X-ray machines or gate ingress and egress systems that are not currently in place. It will also fund training programs and ongoing curriculum for staff. The Port will get a tangible asset from this project and a guideline will be laid out to procure federal funding for the infrastructure requirements.

Commissioner Hardeman indicated that the consultant might find more needs and other problems during the process but concurred with Commissioner Lee's comments about not spending all the funds for consultant fees.

Commissioner McWilliams was not convinced that the consultant would come back with a favorable report based on results. For example, workers at San Francisco International Airport paid the price for some of the security measures that were implemented. A living wage had been negotiated but had been put at risk with the new programs. The House and the Senate have already passed the maritime security bills. The bills would not come out any different than what's already in the pipeline. They still have not been implemented. He was concerned about what might happen related to putting out an RFP or choosing a consultant. He was unsure if it would be in the best interest of the Port to hire the people who are already doing it. His biggest concern was that the cost of the security measures would be borne by the customers and clients of the Port. This would raise the cost particularly to cargo and passenger businesses. The Port would not be able to spread out the cost and it would drive work away from the Port. He wanted to ensure that the end result would not drive work out of this Port or out of this country. He was also concerned that the consultants would bring back proposals that are focused on almost punitive measures that might impact public access and standards for workers. It might also impact the functions or activities of the Port. He wanted to ensure that the consultant would first obtain direction and input from Port staff and Commissioners instead of the consultants dictating the requirements so they could develop a plan that would fit into the federal criteria based on the Port's needs. He asked that his request be taken into consideration in this process. In the maritime industry, one of the solutions for container security is having them checked overseas before they get here. That process takes the work jurisdiction away from the people that are here and are employed in industrial jobs. Those types of impacts to the industry are not appropriate and should not be supported. He reiterated that the Port should not allow a consultant to bring a boilerplate and drive the process. The Port should drive the process, not the consultant.

Mr. Dailey concurred with Commissioner McWilliams' comments and added that one of the major concerns of the American Association of Port Authorities was that each port is

different. Each port has different needs and requirements and the one-size-fits-all security mandate does not work. The interdepartmental team will review and evaluate the RFPs and interview the possible consultants. The selected consultant will make a presentation to the Commission before they move forward with the scope of work and a work plan to ensure it meets the needs of the Commission. Staff will inform Commissioner McWilliams of the internal meetings as they develop the RFP and invite him to the meetings. He complimented Taline Sanassarian for her expertise on the funding issue. The users of the Port would likely pay for the security fee just like the airport. There would be a per TEU assessment. There will be a per passenger assessment per cruise ship and for bulk operations. He and Ms. Sanassarian will continue to monitor the bill and input with our Senate delegations to ensure that the concerns of the Commission such as competitiveness and driving business away are met. The Port of Oakland shares the same concerns as Commissioner McWilliams.

Commissioner McWilliams remarked that based on results, he was not confident in the government's ability not to scrape people off the waterfront for political reasons or punitive things because that has happened in the past.

Commissioner McCarthy inquired if the other ports received different amounts and whether there is latitude in what the money can be used for. Mr. Dailey replied that the ports received different amounts. Port staff has regular conference calls with the Transportation Security Administration. Staff has asked for more latitude such as using the funds for a pilot program or purchasing a new X-ray machine. He believes that they will provide us some latitude. Some of the military ports have specific infrastructure needs to be funded immediately and their assessment completed. One of the requirements of the federal bills in the committee is that every port will ultimately have a professional assessment done.

Commissioner McCarthy remarked that priority should be given to the strict guidelines that the Port has to follow. The Commission should be involved in setting priorities in terms of how the money should be best spent. Mr. Dailey indicated that staff intends to continually keep the Commission involved and informed with the process.

Commissioner Brandon asked if accepting the funds and authorizing the RFP go together or separate issues. Mr. Dailey replied that they go together since time is of the essence. Normally the Commission will accept the funds and staff will come back to seek Commission's approval to issue an RFP. Pressure is upon us to get the assessment done in a relatively prompt manner before the federal guidelines are set. Staff, however, will be back to the Commission to select a consultant.

Commissioner Brandon concurred with Commissioners McWilliams and Lee that assessment is very broad. The Commission would like to see the RFP before it goes out so they could offer some input.

Commissioner Hardeman appointed Commissioners McWilliams and Lee to serve in a committee to work with staff on the RFP.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-33 was adopted.

6. ENGINEERING & MAINTENANCE

A. Request for authorization to advertise for competitive bids for Pier 45 Shed C Fish Processing Facilities Improvements. (Resolution No. 02-27)

Tom Trimbur, Project Manager for the Northern Waterfront, presented the item and requested Commission's approval. Since the last meeting, staff has contacted several of the stakeholders specifically those who had expressed concerns at the last meeting. Staff met with the subcommittee of the Commission on this issue. Staff attempted to listen to the stakeholders' concerns such as traffic congestion in the valley. Staff attempted to look at reducing the congestion for not only in this particular development project but also looked at other options in the future. Mr. Trimbur addressed the concept of having an access hallway through the center of Shed C. The current plan has the access corridor on the valley side. The idea of a center corridor had been looked at a number of months ago prior to the Commission's approval of the preliminary design. A central corridor would be too narrow for two-way traffic to pass through for a pedestrian aisle as well as for any parking that was viewed as important by potential lessees. In addition the central corridor would occur exactly where the clear story is, the best area to develop mezzanines. It would cut off the valley side tenants from emergency egress along the apron. They also talked to several architects who did some renovations in Sheds B and D and the actual physical space of width versus length, they felt was not optimal. For those reasons, they went forward with the design for access corridor along the valley side. Commissioner McWilliams suggested deleting the final wall at the far end of the pier to allow trucks to be able to come in temporarily, turn around and exit through that area. They looked at the cost implications both for initial construction versus providing some sort of leveling slab at the far end. It's awash as far as cost to providing a wall or not. You would need extra fan and you would need to provide some asphalt topping for the area that could potentially be leased. Similarly, removing that wall or removing the paving and making that future tenant's space was pretty much awash. They looked at the leasable space by deleting that wall and providing that to be a turn corridor would mean that they would have 15 percent less leasable space in the entire shed. They looked at using that as a truck turnaround. They notched the wall to provide the opportunity for a 3-point turn for large trucks in that area. They are working with some of the stakeholders to look at redoing the intersection at little Embarcadero and Taylor Street in front of Shed A, trying to make it a 3-way stop and treating it as a typical T-intersection. They presented that, along with some minor changes to the program, to the Fisherman's Wharf Waterfront Advisory Group. The group generally remains supportive of the development of Shed C as fish processing and they were in favor of redoing the intersection. Another suggestion was to have additional staff to be able to manage the facility specifically in the early morning hours when there is most activity. Staff will be coming back to the Commission during the next budgetary cycle and including that as an option in the budget. He informed the Commission that a couple of individuals remain unsatisfied even with a number of suggestions staff has provided. Staff recommends going forward with the program as presented.

Commissioner McWilliams remarked that it was incumbent upon the stakeholders to show up at meetings if there were any problems. Approval of this item was postponed at the last meeting to give people an opportunity to present their ideas/concerns to the Commission so they could make a better decision. Since there are no public speakers today, he presumes there were no stakeholders meetings asked for. He was still uncomfortable with the opportunity to pass traffic through the shed, turn around and in a very efficient way move it in and out of the pier. To not accommodate the turnaround at the end now means it will never happen. Once that space is rented, there will be no ability to facilitate throughput of traffic. If we allow a turnaround in the end that could accommodate those things and if it didn't work out, then we could always put the wall back in and make it a rental space. We are closing the door on an opportunity to facilitate what we hope will help the fishing and tourism industry. Staff has looked at the wisdom in it and thinks it's appropriate to back trucks in and out and it could work really well in the busiest times in the morning. He questions that concept particularly if it's awash. A long-term plan should be established for the small structure in front of Shed A. It sticks out into the middle of traffic that pushes all the pedestrians right out into the road and takes away the ability for people to get in and out of the shed and get people to the submarine or liberty ship. He asked staff to look at taking it out to facilitate truck and pedestrian traffic and public safety.

Mr. Trimbur concurred with Commissioner McWilliams latter statement. Staff will follow Commission's lead.

Commissioner McCarthy asked for an explanation about Mr. Trimbur's comments that the center corridor would cut off emergency egress for Sheds B & D. Mr. Trimbur explained that if the circulation within the shed were down the center, the spaces that were adjacent to the valley would not have direct emergency egress via the apron. It would only be for Shed C, not B & D. It was a significant issue in making the decision for putting the circulation adjacent to the valley.

Commissioner McCarthy mentioned that the committee had two meetings and went through all of the materials that had been sent by a few constituents. She supports the project and staff has done the best it could at this point. People may try to stop it but Port staff has tried everything to make it work.

Commissioner Lee asked how much income would the Port receive on this project. Ms. Carol Anderson, Assistant Deputy Director of Real Estate replied that staff will bring to the Commission the form lease for Pier 45 C in the next month or so. The fee charged would be the same as the other fish processing tenants in Sheds B & D which is approximately 60 cents a foot. This is not a money making endeavor for the Port. The Port will subsidize the project to show its support to the fishing industry. In terms of total income, it would be approximately 40,000 s.f. at 60 cents a foot.

Commissioner McWilliams indicated that his only reservation is about the turnaround at the end of the shed. He thinks it is a better use of the space and it would provide opportunities to facilitate future needs; particularly, moving trucks in and out in an efficient way. If it turns out it's not needed, the space could be rented out.

Commissioner McWilliams was in favor of the proposal but would like to see it amended to leave that option open. He offered amendment to the proposal to accommodate the turnaround at the end of the pier. Commissioner McCarthy seconded it.

Mr. Kirk Bennett, Manager of Waterfront Development Projects, indicated that staff has been through a very extensive planning process for this project. Staff evaluated many different schemes for the layout. This particular scheme was strongly supported; the central corridor was immediately rejected. There was a lot of discussion about turning around and the only comment staff received was from a non-fish processor, Mike Berline. The fish processors thought it works fine. The analysis shows that if there is a problem that notch would facilitate it. The turnaround was not an issue of concern. There is a concern about losing rentable space because it would be difficult to build it later.

Commissioner McWilliams indicated that he speaks from a practical experience because he used to work there when it was a paper dock. It was a valuable asset being able to send trucks down and come back up the other side. If a number of them are backing in and out, it's problematic. If we leave it open as an option, we could make it a rentable space later. If we make it a rentable space now, we could not make it a turnaround later.

Mr. Trimbur suggested that the bid package could be structured to include both options.

Commissioner McWilliams withdrew his motion with the understanding that option is included.

ACTION: Commissioner Brandon moved approval as amended; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-27 was adopted.

7. PLANNING & DEVELOPMENT

- A. Request for approval of a Memorandum of Understanding with Muni to provide and maintain public access improvements on the south side of Islais Creek, as required by the Bay Conservation and Development Commission for the Third Street Light Rail Project. (Resolution No. 02-34)

Ms. Diane Oshima, Planning & Development, indicated that MUNI is proceeding with the Third Street Light Rail project, which involves the construction of tracks and facilities to extend MUNI Metro light rail service from Mission Bay south along Third Street to the Bayview Hunters Point community. As part of this major project, the 4th Street Bridge crossing China Basin Channel, and Nishkian Bridge along Third Street, crossing Islais Creek, require seismic retrofit and improvements to enable light rail service, which requires a permit from BCDC. MUNI has secured a BCDC permit for this work, and has agreed to provide public access on Port property as a condition of the permit. The public access area is located on the south side of Islais Creek, adjacent to the east side of the Nishkian Bridge. The site is paved area that has been improved in the past as public access pursuant to an earlier BCDC permit. Under its BCDC permit MUNI will install new landscaping, furniture and fixtures, and provide all required maintenance of the improved area.

Commissioner Brandon asked for a brief overview of the improvements. Ms. Oshima replied that the improvements are to have it remain as a hardscape surface but there would be new seating benches, tables and a fire hydrant theme proposed by the architect so that along the edge of the creek would be fire hydrant structures that could be lean and sat upon but still industrial in nature. It would replace the aging picnic furniture in the park.

Commissioner McWilliams asked about the cost to the Port. Ms. Oshima replied that there is no cost to the Port.

ACTION: Commissioner Lee moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-34 was adopted.

8. REAL ESTATE

A. Request for authorization to issue Request for Proposals for the renovation, lease and operation of a restaurant at Pier 28-½, formerly known as the Boondocks Restaurant. (Resolution No. 02-35)

Mr. Ken Winters, Director of Real Estate, thanked the entire staff of the Port for helping him get up to speed in fairly short order. He shares the vision and enthusiasm of the entire staff at the Port and also has an eye for the detail. Mr. Winters presented the item and requested Commission's approval.

Commissioner McWilliams asked if this is a proposal for a restaurant. Mr. Winters replied to the affirmative. Commissioner McWilliams asked about the status of the card check in the RFP. Mr. Winters replied that the card check is required in the RFP and required under the standard lease form calling for fair labor practice to include union and any compliance with Board of Supervisors subject to Commission approval.

Commissioner Lee indicated that the base rent should be set as well as the amount of money to be spent for remodeling. The restaurant operator should be expected to spend a considerable amount of money for remodeling and not just spend money on painting. Mr. Winters reiterated Commissioner Lee's question regarding the nature of the restaurant and the RFP offer. It's offered as more of a bid process. It would go forth subject to a level of due diligence by each prospective respondent and thus an economic offer. It is a moderate restaurant, not necessarily a high-end upscale restaurant, befitting to impart the flexibility that we're pursuing subject to the development activity pending at Pier 30/32. We are reserving the right under the lease for a six-month cancellation notice.

Commissioner McCarthy asked if there has been any interest in this project. Mr. Winters replied that at the moment staff is moving forward with no noted interest but there continues to be certain entrepreneurs, opportunists looking and seeking various opportunities. There is interest in the waterfront. Staff is moving forward with a certain level of optimism that we strike the right balance or certain interest.

Commissioner McCarthy concurred with Commissioner Lee's comments about developers not spending enough money into the development and the Port ending up with

a never-ending situation.

Commissioner McWilliams inquired if the Pier 30/32 project is not going to impact the Port's ability to bring a large investment proposal for that site. Mr. Wong replied that is one of the key issues why we want to keep the remodeling very moderate given the fact that as we anticipate the cruise project moving forward, there may be some possibility that we may have to relocate that site.

Commissioner Lee indicated that we should add a certain condition in the lease agreement i.e. the Port reserves the right to relocate them by compensating them. Mr. Winters indicated that condition is covered in the cancellation notice.

Jeffrey Leibovitz, Rincon Point South Beach CAC, asked the Port to include a provision in the RFP that the operator of the restaurant include the good neighbor policies adopted by the Port regarding waterfront development and restaurant operations along the waterfront. It has to do with simply being a good neighbor.

ACTION: Commissioner Lee moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-35 was adopted.

B. Request for approval of proposed Second Amendment of Lease No. L-12120, between the Port and Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc., for property located at Pier 38. (Resolution No. 02-36)

Mr. Ken Winters, Director of Real Estate, presented the item and requested Commission's approval. This lease satisfactorily meets the conditions set forth and approved in previous Commission meeting.

Commissioner McCarthy asked if all of the BCDC requirements have been met and if the lease is in good standing. Mr. Winters replied to the affirmative and acknowledged Phil Williamson's efforts on this project.

Jeffrey Leibovitz encouraged the Commission to adopt the modification to the lease. The boats would invigorate the waterfront and bring maritime activity to Pier 38 and to the struggling waterfront community.

ACTION: Commissioner McWilliams moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-36 was adopted.

9. NEW BUSINESS/PUBLIC COMMENT

Maury Polse, Fisherman's Wharf Tour Boat Operator, apprised the Commission about a dangerous situation at fisherman's wharf regarding men, who call themselves the bushmen, who continually assault people on Jefferson Street between Taylor and Jones. He asked the Commission to have the District Attorney investigate the matter and put an end to this activity at the wharf.

Ernestine Weiss asked the Commission to put up a sign along the Embarcadero sidewalk prohibiting the use of roller blades, bicycles, scooters, skates on the sidewalk. This type of activity is becoming increasingly dangerous for pedestrians, seniors, and people with disabilities. Although it's not under Port jurisdiction, Ernestine Weiss asked the Commission to work with the City to put up signs restricting the use of bicycles, skateboards, scooters, at the pathway from the end of Market Street across to the Ferry Building.

Ernestine Weiss asked about the completion date of the Ferry Building construction. Mr. Wong replied that the original completion of the Ferry Building was November 2002. The construction will be completed sometime in January 2003. The grand opening will take place in March 2003.

Ernestine Weiss inquired about the hearing on the skateboarders in relation to Pier 1-½, & 5. Ms. Sanassarian indicated that the Arts Commission is scheduled to have a hearing at the Port but it has not yet been scheduled.

Francisco Da Costa apprised the Commission about a huge pile of toxic waste located between Pier 92 and 94 for the last seven years. The dust has been flying all over the place. When it rains, the toxic waste goes to the bay. Nobody is doing anything about it. A few of the Commissioners are compassionate and cares about the environment. He requested the Commissioners to take a look at the huge pile of dirt and have it removed in total. If it were in the Marina or Pacific Heights, the toxic waste would have been removed within ten days. He told the Commission not to listen to people who say that it's not toxic and that it can be reused. Port staff has conducted the test and this site is very toxic. Seven years ago, they were not as concerned about the environment as they are now. He hopes that the Port removes all the toxic waste within the next couple of weeks.

Commissioner Hardeman thanked Mr. Da Costa's for his comments and indicated that staff has heard his comments.

Commissioner Brandon indicated that Supervisor Sandoval requested that the Port hold an informational presentation regarding the skateboard park at Pier 24. She informed the Supervisor that this item has not been brought to the Commission for action or presentation. She asked staff for an update at the next Commission meeting.

Commissioner Brandon also mentioned Supervisor Gonzales request for a status report on Harry Bridges Plaza and the monument.

Commissioner Hardeman directed the Executive Director to take note of the Supervisors request and to schedule the presentations when appropriate.

Commissioner Hardeman congratulated Commissioner Brandon for her reappointment to the Port Commission.

10. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Lee moved approval; Commissioner McWilliams seconded the motion.

At 5:20 p.m., the Commission withdrew to executive session to discuss the following.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTERS (Discussion and Action Item)

- a. Discuss existing litigation matters pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (2 cases):
 - F. Alioto Company, Inc. et al. v. City and County of San Francisco, et al., San Francisco Superior Court Case No. 318360, filed January 25, 2001. (Discussion and Action Item)
 - Bistro Z et al. v. City and County of San Francisco et al., Superior Court No. 319-566. (Discussion and possible action on proposed settlement agreement between the Port and Bistro Z principals, Sheila Zaki and Seifi Zaki.)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Embarcadero Hotel
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Stanford Hospitality Inc.: Lawrence Lui
- b. Property: Rincon Park Restaurant Site
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Rincon Park Restaurants, LLC: Reed Hearon
- c. Property: SWL 301
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*S.P. Tarantino Insurance: Don Tarantino
- d. Property: SWL 322 (900 Front Street)
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Gerson Bakar & Associates: Gerson Bakar
- e. Property: 601 Cesar Chavez
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Pier 80 Inn Restaurant: Derf Butler

11. RECONVENE IN OPEN SESSION

At 7:00 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in executive session; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

12. ADJOURNMENT

ACTION: Commissioner McWilliams moved approval to adjourn the meeting; Commissioner Lee seconded the motion. All of the Commissioners were in favor. The meeting was adjourned at 7:00 p.m.

SAN FRANCISCO PORT COMMISSION

DOCUMENTS DEPT.

SEP - 6 2002

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REGULAR MEETING

4:00 P.M., TUESDAY, SEPTEMBER 10, 2002

BAYSIDE CONFERENCE ROOM

PIER 1, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public are posted on the Port's Website at www.sfport.com.

AGENDA

1. ROLL CALL

2. APPROVAL OF MINUTES - August 27, 2002 Regular Meeting

3. EXECUTIVE

A. Executive Director's Report

- Proclamation for Charlie Piazza (25 years of City Service)
- San Francisco Grand Prix 2002 Bicycle Race

- B. Request for approval of Resolution seeking San Francisco Board of Supervisors' concurrence in opposing Federal intervention in the collective bargaining process between the International Longshore and Warehouse Union and the Pacific Maritime Association. (Resolution No. 02-41) (Staff report provided to the Commission.)

4. ADMINISTRATIVE SERVICES

- A. Request for approval of revisions to the Port's Fiscal Year 2002/2003 Operating Budget. (Resolution No. 02-37) (Staff report provided to the Commission.)

5. PLANNING & DEVELOPMENT

- A. Request for approval of Extension of Exclusive Negotiations for the Embarcadero Hotel Project at Broadway on Seawall Lots 323, 324 and 322-1. (Resolution No. 02-38) (Staff report provided to the Commission.)

6. REAL ESTATE

- A. Request for approval of lease assignment from North Coast Fisheries, Inc. to Next Seafood, Inc. at Pier 45 Shed D. (Resolution No. 02-39) (Staff report provided to the Commission.)

- B. Request for approval of lease assignment from Albers Seafood, Inc. to Scoma's Restaurant at Pier 47. (Resolution No. 02-40) (Staff report provided to the Commission.)

7. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to all Commissioners for review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

8. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):
- F. Alioto Company, Inc. et al. v. City and County of San Francisco, et al., San Francisco Superior Court Case No. 318360, filed January 25, 2001.
(Discussion and Action Item)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Joe Gerace

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 19/23.

- b. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*National Park Service: George Turnbull
*Bay Area Center for Arts & Technology: William Strickland

Under Negotiation: ____ Price ____ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 70.

- c. Property: 160 Jefferson Street (Lease No. 7495)
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Alioto Fish Company: Nunzio Alioto

Under Negotiation: ____ Price ____ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at 160 Jefferson Street.

- d. Property: Alioto Restaurant #8 @ Taylor Street (Lease No. 7491)
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Alioto Fish Company: Nunzio Alioto

Under Negotiation: ____ Price ____ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Taylor Street.

9. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

10. ADJOURNMENT

SEPTEMBER/OCTOBER 2002
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
September 10	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
September 24 <i><u>Cancelled</u></i>	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
October 8	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
October 22	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406 to be placed on the mailing list for Commission meeting agenda. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Person: Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets every other month on the third Thursday at 11:30 a.m. in Bayside 1 @ Pier 1. Contact Person: Jill Simpson @ 274-0519. The next meeting is scheduled on September 19, 2002.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:00 to 7:00 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 - 8th Street between Irvin and Hooper. Contact Person: Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact Person: David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Person: Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-41

- WHEREAS, The federal government has announced that it may intervene in the labor negotiations involving the Pacific Maritime Association and The International Longshore and Warehouse Union declaring a national emergency in order to forestall strike or lock out activity by the bargaining parties; and
- WHEREAS, The federal government has further threatened to use its powers to intervene in the event of any stoppage of work including the use of the Taft-Hartly Law, The National Guard and/or U.S. Military; and, therefore be it
- RESOLVED, That the San Francisco Port Commission ask the Board of Supervisors to join with us in denouncing any such intervention in the collective bargaining process or the use of federal money or troops to sway the constitutionally based balance of power between the bargaining parties; and, be it further
- RESOLVED, That we invoke the memory of troops employed in the same vein 68 years ago on our docks and the destructive results in publicly opposing any such interference.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 10, 2002.

Secretary



MEMORANDUM

September 6, 2002

TO: MEMBERS, PORT COMMISSION
 Hon. Michael Hardeman, President
 Hon. Kimberly Brandon, Vice President
 Hon. Brian McWilliams
 Hon. Denise McCarthy
 Hon. Pius Lee

FROM: Douglas F. Wong, Executive Director *DN*

SUBJECT: Revision to the Port's Fiscal Year 2002/03 Operating Budget

DIRECTOR'S RECOMMENDATION: Approve Revisions to Annual Operating Budget for Fiscal Year 2002/03

At the February 12, 2002 meeting the Port Commission approved the proposed FY 2002/03 Operating Budget. This proposed budget was submitted to the Mayor and the Board of Supervisors for their review and approval. During this process, substantive changes were made to the budget. We are now bringing this revised version of the FY 2002/03 Operating Budget before you for your approval.

The changes to the budget are summarized in the table below. The most significant change to the budget is the proposed \$2.0 million to cover projected eligible reimbursable service costs in FY 2002/03. The changes also include a \$315,327 decrease for salary and fringe benefits, \$50,600 decrease for Promotion & Entertainment, and \$50,000 increase for Professional & Specialized Services.

Summary of Commission vs. Board Approved Operating Budget, F Y 02/03 vs. FY 01/02							
	FY 01/02	FY 02/03 Approved		Bd. of Sups.		Bd. of Sups.	
	Bd. of Sups. Approved	Commission 02/12/02	Bd. of Sups.* 08/09/02	vs. Commission	Percent Change	FY 02/03 vs. FY 01/02	Percent Change
Salaries & Fringe	\$21,972,524	\$22,789,583	\$22,474,256	(\$315,327)	-1.4%	\$501,732	2.3%
Other Current Expenses	1,569,250	1,489,775	1,484,175	(5,600)	-0.4%	(85,075)	-5.4%
Equipment Purchase – Budget	1,181,425	40,000	90,000	50,000	125.0%	(1,091,425)	-92.4%
Services Other Dept**	0	0	2,000,000	2,000,000	100.0%	2,000,000	N/A
Sub total	\$24,723,199	\$24,319,358	\$26,048,431	\$1,729,073	7.1%	\$1,325,232	5.4%
Plus unadjusted expenditures	32,159,442	24,838,951	24,793,779	(45,172)	0.0%	(9,369,709)	-27.4%
Total Operating Expenses	\$58,886,687	\$49,158,309	\$50,842,210	\$1,683,901	3.5%	(\$8,044,477)	-13.7%
Total Revenue	\$58,886,687	\$49,172,500	\$51,011,970	\$1,839,470	0.0%	(\$7,874,717)	-13.4%
Total Operating Expenses	58,886,687	49,158,309	50,842,210	1,683,901	3.5%	8,044,477	-13.7%
Net Change	\$0	\$14,191	\$169,760	\$155,569	0.0%	\$169,760	N/A

* Includes changes by staff.

** Work Order.

THIS PRINT COVERS CALENDAR ITEM NO. 4A

The Port is working with the Mayor's office, along with the Controller and the City Attorney to thoroughly review the Port's reimbursements to the City for the costs the City incurred in support of the Port and its tenants. In those cases where it is determined that the Port has not properly reimbursed the City for legally eligible costs the Port will reimburse the City from the \$2 million set aside in this revised budget. It is anticipated that an outside consultant will be contracted to conduct this review. Port staff along with representatives from the Mayor's Office, Controllers Office and the City Attorney will form a committee to oversee this review.

Staff recommends that you pass this budget as revised by the Board of Supervisors with one exception; in the version of the budget approved by the Board of Supervisors there was a \$169,760 increase in the funding for maintenance of the Fire Boat. Port staff was not consulted and no documentation justifying this 114% increase was provided to Port staff prior to the budget being acted on by the Board of Supervisor. Thus staff is recommending that you approve the budget as approved by the Board of Super visor, less this \$169,760.

Attached for your reference and information, please find a summary of revenue and expenditure details.

The proposed changes will result in an increase of \$1,839,470 over the budget approved by the Commission on February 12, 2002. Staff requests Commission approval of the revisions to Port Annual Operating Budget as described herein. At a later date, however, Port staff will request the Commission's approval and authorization for the Port to carry out the study of reimbursable costs. This study is prerequisite to the proposed transfer from the Port to the City and County of San Francisco to cover projected eligible reimbursable service costs in FY 2002-2003. At the conclusion of the study, staff will identify the expense items that are eligible for reimbursement and seek Commission authorization for the expense.

Prepared by: Joel Robinson

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-37

- WHEREAS, Under Charter Section B3.581 (S), the Port Commission the exclusive power to expend all funds necessary to carrying out its power and duty to operate and control the port areas of San Francisco; and
- WHEREAS, pursuant to that power, Port staff developed a Fiscal Year 2002/032 operating budget; and
- WHEREAS, this operating budget, which included projected revenues of \$49,172,500 and projected expenses of \$49,158,309, was approved by the Commission by Resolution No. 02-05 at its February 12, 2002 meeting; and
- WHEREAS, Port staff submitted this budget to the Mayor and the Board of Supervisors for their approval; and
- WHEREAS, in its Resolution No. 02-05 the Commission authorized the Executive Director to make non-material changes to the operating budget as necessary; and
- WHEREAS, the operating budget that was approved by the Mayor and the Board of Supervisors contains material changes; and
- WHEREAS, staff has reviewed the revised operating budget that was approved by the Mayor and the Board of Supervisors; and
- WHEREAS, the revised operating budget that was approved by the Mayor and the Board of Supervisors has \$169,760 in funding for fire boat maintenance that staff believes was not adequately documented; and
- WHEREAS, the revised operating budget includes a \$2 million set aside to reimburse the City for legally eligible costs as determined by a study to be undertaken this fiscal year; and
- WHEREAS, the revised operating budget includes projected revenues of \$51,011,970; and
- WHEREAS, the revised operating budget includes projected expenses of \$50,842,210; and
- WHEREAS, the revised operating budget includes projected surplus of \$169,760; now therefore, be it

RESOLVED, that the Port Commission hereby approves the revised Fiscal Year 2002/03 operating budget as approved by the Board of Supervisors less, \$169,760 for the Fire Boat maintenance, provided, however, that any expenditure from the \$2 million set aside shall not be expended until specifically approved by the Port Commission, and be it further

RESOLVED, that the Port Commission directs the Executive Director to seek Commission authorization for any expenditure from the \$2 million amount set aside to reimburse the City for eligible costs identified in the study of reimbursable costs.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2002.

Secretary

PORT OF SAN FRANCISCO
REVENUE AND EXPENSE SUMMARY
FISCAL YEAR 2002/03

	Actual <u>00/01</u>	Budget <u>00/01</u>	Budget <u>01/02</u>	Budget <u>02/03</u>	<u>Increase / Decrease</u>	
					<u>Amount</u>	<u>Percent</u>
Revenue	\$76,420,727	\$45,916,000	\$58,886,687	\$51,011,970	(\$7,874,717)	-13.4%
Expense	<u>39,063,654</u>	<u>45,013,855</u>	<u>58,886,687</u>	<u>50,842,210</u>	<u>(8,044,477)</u>	<u>-13.7%</u>
Surplus	<u>\$37,357,073</u>	<u>\$902,146</u>	<u>\$0</u>	<u>\$169,760</u>	<u>\$169,760</u>	<u>N/A</u>

PORT EXPENSE SUMMARY
FISCAL YEAR 2002/03

	Actual <u>00/01</u>	Budget <u>00/01</u>	Budget <u>01/02</u>	Budget <u>02/03</u>	<u>Increase / Decrease</u>	
					<u>Amount</u>	<u>Percent</u>
Salaries						
Salaries	\$15,811,239	\$15,763,985	\$17,404,390	\$18,018,336	\$613,946	3.5%
Fringe Benefits	<u>4,030,122</u>	<u>4,125,574</u>	<u>4,568,134</u>	<u>4,455,920</u>	<u>(112,214)</u>	<u>-2.5%</u>
Subtotal	19,841,361	19,889,559	21,972,524	22,474,256	501,732	2.3%
City-wide Overhead	508,541	508,541	652,541	728,426	75,885	11.6%
Other Current Expenses						
Travel	140,327	108,090	118,543	108,255	(10,288)	-8.7%
Training	114,680	70,000	115,000	90,000	(25,000)	-21.7%
Employee Field Expenses	3,052	3,810	4,440	4,663	223	5.0%
Membership Fees	43,652	50,630	57,095	47,685	(9,410)	-16.5%
Promotional & Entertain.	327,917	341,700	243,887	252,700	8,813	3.6%
Prof. & Specialized Svcs	1,082,864	1,270,500	1,206,820	1,123,220	(83,600)	-6.9%
Maint Svcs - Bldg & Structures	740,328	966,200	800,852	727,800	(73,052)	-9.1%
Maint Svcs - Equipment	428,878	344,506	410,034	419,993	9,959	2.4%
Rents & Leases - Buildings	986,844	0	2,558,600	2,586,125	27,525	1.1%
Rents & Leases - Equipment	201,855	542,870	102,287	153,406	51,119	50.0%
Utilities Expenses	775,832	552,000	556,000	669,600	113,600	20.4%
Other Current Expenses	<u>364,897</u>	<u>374,377</u>	<u>372,385</u>	<u>390,655</u>	<u>18,270</u>	<u>4.9%</u>
Subtotal	5,211,125	4,624,683	6,545,943	6,574,102	28,159	0.4%
Materials & Supplies	2,071,215	1,848,769	2,033,640	1,445,046	(588,594)	-28.9%
Fixed Charges	514,141	432,860	326,525	358,584	32,059	9.8%
Capital Outlay	838,918	1,101,900	1,181,425	90,000	(1,091,425)	-92.4%
Facilities Maintenance	0	499,400	802,900	524,800	(278,100)	-34.6%
Debt Service	3,292,096	9,089,466	15,707,546	7,029,240	(8,678,306)	-55.2%
Services of Other Departments						
ADM - Insurance & Risk	70,630	750,000	1,300,000	1,900,000	600,000	46.2%
City Attorney - Legal Services	1,597,772	1,479,000	1,733,820	1,885,870	152,050	8.8%
Fire Protection	1,937,260	1,552,500	1,506,600	1,629,828	123,228	8.2%
DHR - Workers Compensation	325,968	300,000	324,926	600,000	275,074	84.7%
PUC - Light, Heat & Power	953,439	967,400	1,496,360	1,332,360	(164,000)	-11.0%
All Other Departments	<u>1,624,724</u>	<u>1,706,812</u>	<u>2,521,903</u>	<u>3,973,498</u>	<u>1,451,595</u>	<u>57.6%</u>
Subtotal	6,509,793	6,755,712	8,883,609	11,321,556	2,437,947	27.4%
Interdepartmental Recovery	0	(13,500)	486,500	(13,500)	(500,000)	-102.8%
Revenue Transfer Out - DPT	276,465	276,465	293,534	309,700	16,166	5.5%
Total	<u>\$39,063,654</u>	<u>\$45,013,855</u>	<u>\$58,886,687</u>	<u>\$50,842,210</u>	<u>(\$8,044,477)</u>	<u>-13.7%</u>

PORT EXPENDITURE SCHEDULE
FISCAL YEAR 2002/03

Char Obj	Subobj	Actual 00/01	Budget 00/01	Budget 01/02	Budget 02/03	Increase / Decrease Amount	Percent
Salaries							
001 001	00101 Permanent Salaries	\$14,931,551	\$14,984,324	\$16,566,621	\$17,225,862	\$659,241	4.0%
001 005	00501 Temp. Salaries	215,391	261,416	352,684	227,839	(124,845)	-35.4%
001 009	00901 Premium Pay	120,841	136,706	101,227	155,552	54,325	53.7%
001 011	01101 Overtime	543,456	381,540	383,858	409,083	25,225	6.6%
	Subtotal	15,811,239	15,763,985	17,404,390	18,018,336	613,946	3.5%
013 013	01300 Mandatory Fringe Benefits	4,030,122	4,125,574	4,568,134	4,455,920	(112,214)	-2.5%
	Subtotal Salaries & Fringe	19,841,361	20,075,403	21,972,524	22,474,256	501,732	2.3%
020 020	02000 Indirect Cost Reimbursement	508,541	508,541	652,541	728,426	75,885	11.6%
Other Current Expenses							
021 021	02100 Travel - Budget	140,327	108,090	118,543	108,255	(10,288)	-8.7%
021 022	02200 Training - Budget	114,680	70,000	115,000	90,000	(25,000)	-21.7%
021 023	02300 Employee Field Expenses - Budget	3,052	3,810	4,440	4,663	223	5.0%
021 024	02400 Membership Fees	43,652	50,630	57,095	47,685	(9,410)	-16.5%
021 025	02500 Promotional & Entertain. - Budget	327,917	341,700	243,887	252,700	8,813	3.6%
021 027	02700 Prof. & Specialized Svcs - Budget	1,082,864	1,270,500	1,206,820	1,123,220	(83,600)	-6.9%
021 028	02800 Maint Svcs - Bldg & Structures - Budget	740,328	966,200	800,852	727,800	(73,052)	-9.1%
021 029	02900 Maint Svcs - Equipment - Budget	428,878	344,506	410,034	419,993	9,959	2.4%
021 030	03000 Rents & Leases - Bldgs & Struct - Budget	986,844	0	2,558,600	2,586,125	27,525	1.1%
021 031	03100 Rents & Leases - Equipment - Budget	201,855	542,870	102,287	153,406	51,119	50.0%
021 032	03200 Utilities Expenses - Budget	775,832	552,000	556,000	669,600	113,600	20.4%
021 035	03500 Other Current Expenses - Budget	364,897	374,377	372,385	390,655	18,270	4.9%
	Subtotal	5,211,125	4,624,683	6,545,943	6,574,102	28,159	0.4%
040 040	04000 Materials & Supplies - Budget	2,071,215	1,848,769	2,033,640	1,445,046	(588,594)	-28.9%
050 052	05200 Taxes, Licenses & Permits - Budget	121,213	182,860	76,525	108,584	32,059	41.9%
050 053	05300 Judgment, Claims & Litigation - Budget	392,928	250,000	250,000	250,000	0	0.0%
	Subtotal	514,141	432,860	326,525	358,584	32,059	9.8%
060 060	06000 Equipment Purchase - Budget	838,918	1,101,900	1,181,425	90,000	(1,091,425)	-92.4%
06F 06F	06F00 Facilities Maintenance - Budget	0	499,400	802,900	524,800	(278,100)	-34.6%
070 070	07000 Debt Service - Budget	3,292,096	9,089,466	15,707,546	7,029,240	(8,678,306)	-55.2%

PORT EXPENDITURE SCHEDULE
FISCAL YEAR 2002/03

Char Obj	Subobj	Actual 00/01	Budget 00/01	Budget 01/02	Budget 02/03	Increase / Decrease Amount	Percent
Services of Other Departments							
081	081	17,900	17,900	18,258	18,258	0	0.0%
081	081	70,630	750,000	1,300,000	1,900,000	600,000	46.2%
081	081	120,556	123,000	212,681	151,181	(61,500)	-28.9%
081	081	1,597,772	1,479,000	1,733,820	1,885,870	152,050	8.8%
081	081	0	0	4,982	4,982	0	0.0%
081	081	20,342	84,000	84,000	84,000	0	0.0%
081	081	252,986	222,108	240,534	277,047	36,513	15.2%
081	081	50,000	50,000	50,000	50,000	0	0.0%
081	081	0	0	385,000	15,000	(370,000)	-96.1%
081	081	284,951	206,557	188,057	290,756	102,699	54.6%
081	081	1,937,260	1,552,500	1,506,600	1,629,828	123,228	8.2%
081	081	20,467	9,900	9,900	9,900	0	0.0%
081	081	31,303	42,795	42,795	0	(42,795)	-100.0%
081	081	5,625	0	24,957	24,957	0	0.0%
081	081	0	5,625	6,188	6,188	0	0.0%
081	081	325,968	300,000	324,926	600,000	275,074	84.7%
081	081	0	4,000	0	0	0	0.0%
081	081	17,626	23,699	18,433	18,433	0	0.0%
081	081	9,376	9,376	9,376	9,376	0	0.0%
081	081	173,258	212,639	217,657	138,586	(79,071)	-36.3%
081	081	176,485	191,000	186,000	186,000	0	0.0%
081	081	4,000	4,000	4,600	4,600	0	0.0%
081	081	8,863	9,100	12,100	5,800	(6,300)	-52.1%
081	081	50,376	49,313	52,082	56,249	4,167	8.0%
081	081	0	0	202,683	60,535	(142,148)	-70.1%
081	081	25,841	32,000	36,000	24,800	(11,200)	-31.1%
081	081	101,168	94,300	99,020	132,250	33,230	33.6%
081	081	43,756	100,000	100,000	80,000	(20,000)	-20.0%
081	081	674	4,300	4,300	500	(3,800)	-88.4%
081	081	953,439	967,400	1,496,360	1,332,360	(164,000)	-11.0%
081	081	674	3,000	3,000	2,000	(1,000)	-33.3%
081	081	42,477	50,700	65,000	65,000	0	0.0%
081	081	31,352	0	15,000	80,500	65,500	436.7%
081	081	25,841	25,000	25,000	15,000	(10,000)	-40.0%
081	081	0	0	0	0	0	0.0%
081	081	0	0	0	0	0	0.0%
081	081	0	7,000	7,700	0	(7,700)	-100.0%
081	081	9,703	22,500	22,500	0	(22,500)	-100.0%
081	081	97,124	103,000	175,000	162,500	(12,500)	-7.1%
081	081	0	0	0	2,000,000	2,000,000	0.0%
081	081	6,509,793	6,755,712	8,883,602	11,321,556	2,437,947	27.4%
Subtotal							
086	086	0	(13,500)	486,500	(13,500)	(500,000)	-102.8%
091	093	276,465	276,465	293,534	309,700	16,166	5.5%
Total							
		39,063,654	45,199,692	58,886,687	50,842,210	(8,044,477)	-13.7%

DIVISION EXPENSE
FISCAL YEAR 2002/03

Char	Obj	Subobj	Maritime	Real Estate	Planning & Development	Administrative Services	Engineering & Maintenance	Executive	Total
Services of Other Departments									
081	081	081EV Environment	0	0	0	0	18,258	0	18,258
081	081	081CB ADM - Insurance & Risk	0	0	0	1,900,000	0	0	1,900,000
081	081	081CP City Planning	0	0	151,181	0	0	0	151,181
081	081	081CT City Attorney - Legal Svcs.	0	0	0	0	0	1,885,870	1,885,870
081	081	081CZ TIS - Special Projects	0	0	0	4,982	0	0	4,982
081	081	081C4 Controller - Internal Audit	0	0	0	84,000	0	0	84,000
081	081	081C5 ISD - Maintenance & Operations	0	0	0	277,047	0	0	277,047
081	081	081ED Business & Economic Devel. - Mayor's	0	0	0	50,000	0	0	50,000
081	081	081BI Department of Building Inspection	0	0	0	0	15,000	0	15,000
081	081	081ET TIS - Telephone	0	0	0	290,756	0	0	290,756
081	081	081FD Fire	0	0	0	0	1,629,828	0	1,629,828
081	081	081HE SFGH - Medical Services	0	0	0	0	9,000	0	9,000
081	081	081HT CHS - Toxic Waste & Haz Mat Svcs	0	0	0	0	0	0	0
081	081	081HS CHS - Medical Services	0	0	0	0	0	0	0
081	081	081H1 HR - Exams	0	0	0	24,957	0	0	24,957
081	081	081H2 HR - Management Training	0	0	0	6,188	0	0	6,188
081	081	081H3 HR - Workers Comp.	0	0	0	0	600,000	0	600,000
081	081	081H4 HR - Employee Assistance Program	0	0	0	0	0	0	0
081	081	081H7 HR - Labor Negotiations	0	0	0	18,433	0	0	18,433
081	081	081H8 HR - Drug Testing	0	0	0	9,376	0	0	9,376
081	081	081H9 Human Rights Commission	0	0	0	138,586	0	0	138,586
081	081	081MY Mayor's Office Services	0	0	0	141,000	0	45,000	186,000
081	081	081M2 Mayor's Youth Works	0	0	0	4,600	0	0	4,600
081	081	081PA PURCH - Central Shops - Auto	0	0	0	500	5,300	0	5,800
081	081	081PG PURCH - General Office	0	0	0	56,249	0	0	56,249
081	081	081PH OCA - MCO Living Health	0	0	0	60,535	0	0	60,535
081	081	081PR PURCH - Reproduction	0	0	7,000	15,000	2,800	0	24,800
081	081	081PS Police Security	27,750	104,500	0	0	0	0	132,250
081	081	081RE Real Estate	0	30,000	50,000	0	0	0	80,000
081	081	081RP Rec & Park - Gardener	0	0	0	0	500	0	500
081	081	081UL PUC - Light, Heat & Power	0	1,332,360	0	0	0	0	1,332,360
081	081	081UW PUC - Water	0	0	0	0	2,000	0	2,000
081	081	081SB Surety Bond	0	0	0	65,000	0	0	65,000
081	081	081PK Parking & Traffic	80,500	0	0	0	0	0	80,500
081	081	081WGPW - General Administration	0	0	0	0	15,000	0	15,000
081	081	081HF DPW - Geographic Data Svc	0	0	0	0	0	0	0
081	081	081WADPW - Architecture	0	0	0	0	0	0	0
081	081	081WB DPW - Building Repair	0	0	0	0	0	0	0
081	081	081WE DPW - Engineering	0	0	0	0	0	0	0
081	081	081WR DPW - Street Repair	0	0	0	0	162,500	0	162,500
081	081	08199 MISC Department	0	2,000,000	0	0	0	0	2,000,000
		Subtotal	108,250	3,466,860	208,181	3,147,209	2,460,186	1,930,870	11,321,556
086	086	Interdepartmental Recovery	0	0	0	0	(13,500)	0	(13,500)
091	093	0931G Revenue Transfer Out - DPT	0	309,700	0	0	0	0	309,700
		Total	1,753,692	10,127,010	2,010,569	16,539,072	17,647,089	2,764,771	50,842,210

**REVENUE
BY INDUSTRY
FISCAL YEAR 2002/2003**

	<u>Actual</u> <u>2000/01</u>	<u>Budget</u> <u>2000/01</u>	<u>Budget</u> <u>2001/02</u>	<u>Budget</u> <u>2002/03</u>	<u>Increase/(Decrease)</u> <u>Amount Percent</u>	
Cargo						
Dockage	\$187,885	\$178,000	\$145,000	\$50,000	(\$95,000)	-66%
Wharfage	212,754	170,000	115,000	150,000	35,000	30%
Crane Rental	470,148	312,000	430,000	0	(430,000)	-100%
Rent	1,926,465	2,278,000	2,287,000	2,938,000	651,000	28%
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0%</u>
Subtotal	2,797,252	2,938,000	2,977,000	3,138,000	161,000	5%
Ship Repair						
Dockage	0	0	0	0	0	0%
Rent	<u>1,025,995</u>	<u>800,000</u>	<u>1,250,000</u>	<u>1,075,000</u>	<u>(175,000)</u>	<u>-14%</u>
Subtotal	1,025,995	800,000	1,250,000	1,075,000	(175,000)	-14%
Harbor Services						
Dockage	29,041	25,000	45,000	35,000	(10,000)	-22%
Non-Cargo Wharfage	2,000	0	0	0	0	0%
Rent	<u>820,015</u>	<u>820,000</u>	<u>870,000</u>	<u>898,000</u>	<u>28,000</u>	<u>3%</u>
Subtotal	851,056	845,000	915,000	933,000	18,000	2%
Cruise						
Dockage	98,712	55,000	43,000	61,000	18,000	42%
Passenger Wharfage	537,109	437,000	501,000	682,000	181,000	36%
Non-Cargo Wharfage	8,481	10,000	15,000	10,000	(5,000)	-33%
Rent	<u>29,533</u>	<u>21,000</u>	<u>26,000</u>	<u>7,000</u>	<u>(19,000)</u>	<u>-73%</u>
Subtotal	673,835	523,000	585,000	760,000	175,000	30%
Fishing						
Dockage	109,321	156,000	199,000	212,000	13,000	7%
Fish Wharfage	39,698	58,000	58,000	45,000	(13,000)	-22%
Rent	<u>1,147,181</u>	<u>1,208,000</u>	<u>1,249,000</u>	<u>1,219,000</u>	<u>(30,000)</u>	<u>-2%</u>
Subtotal	1,296,200	1,422,000	1,506,000	1,476,000	(30,000)	-2%
Other Marine						
Dockage	705,372	807,000	732,000	597,500	(134,500)	-18%
Non-Cargo Wharfage	0	0	0	0	0	0%
Rent	441,582	398,000	498,000	526,000	28,000	6%
Landing Fees	<u>112,309</u>	<u>100,000</u>	<u>120,000</u>	<u>120,000</u>	<u>0</u>	<u>0%</u>
Subtotal	1,259,263	1,305,000	1,350,000	1,243,500	(106,500)	-8%

**REVENUE
BY INDUSTRY
FISCAL YEAR 2002/2003**

	Actual 2000/01	Budget 2000/01	Budget 2001/02	Budget 2002/03	Increase/(Decrease) Amount	Percent
Commercial/Industrial						
Rent	43,974,912	16,867,000	19,333,000	19,798,000	465,000	2%
Rent from Percentage Leases	<u>12,047,310</u>	<u>11,027,000</u>	<u>11,745,000</u>	<u>11,116,000</u>	<u>(629,000)</u>	<u>-5%</u>
Subtotal	56,022,222	27,894,000	31,078,000	30,914,000	(164,000)	-1%
Parking						
Meters	1,103,284	930,000	1,050,000	1,066,000	16,000	2%
Stalls	144,956	336,000	160,000	124,000	(36,000)	-23%
Rent	5,484,268	4,389,000	4,650,000	4,538,000	(112,000)	-2%
Fines	<u>1,200,000</u>	<u>1,200,000</u>	<u>1,200,000</u>	<u>1,200,000</u>	0	0%
Subtotal	7,932,508	6,855,000	7,060,000	6,928,000	(132,000)	-2%
Power	18,401	0	0	0	0	0%
Filming	68,522	100,000	100,000	75,000	(25,000)	-25%
Special Events	217,611	150,000	150,000	75,000	(75,000)	-50%
Miscellaneous Services	44,006	50,000	50,000	50,000	0	0%
Facility Damage	6,530	6,000	6,000	6,000	0	0%
Tenant Services	27,719	30,000	0	0	0	0%
Permits	687,566	200,000	775,000	175,000	(600,000)	-77%
Miscellaneous Repairs	6,291	19,000	30,000	30,000	0	0%
Negotiation Fees	145,000	250,000	205,000	50,000	(155,000)	-76%
Interest on Investments	3,251,340	2,500,000	2,450,000	2,220,000	(230,000)	-9%
Penalties & Svc. Charges	14,435	20,000	20,000	15,000	(5,000)	-25%
Miscellaneous Receipts	74,975	9,000	8,379,687	9,000	(8,370,687)	-100%
From Fund Balance	0	0	0	1,839,470		
TOTAL PORT	<u>\$76,420,727</u>	<u>\$45,916,000</u>	<u>\$58,886,687</u>	<u>\$51,011,970</u>	<u>(\$7,874,717)</u>	<u>-13%</u>



MEMORANDUM

September 4, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Extension of Exclusive Negotiations for Embarcadero Hotel Project at Broadway on
Seawall Lots 323, 324 and 322-1

DIRECTOR'S RECOMMENDATION: APPROVE EXTENSION OF EXCLUSIVE RIGHT TO
NEGOTIATE WITH STANFORD HOSPITALITY, INC.

BACKGROUND

In November 1998, the Port issued a Request for Qualifications and Proposals ("RFQ/P") for the lease, development and operation of a first-class, full-service hotel on Seawall Lots 323, 324 and 322-1, plus a City-owned parcel, at the corner of Broadway and The Embarcadero (See Exhibit A attached hereto). Three respondents submitted qualifications. In March 1999 the Port Commission invited two respondents to submit proposals for the hotel by May 18, 1999. Stanford Hospitality, Inc. ("Stanford") was the only respondent to submit a proposal, which was for a 410-room hotel.

On August 10, 1999, by Resolution No. 99-62, the Port Commission authorized Exclusive Negotiations with Stanford. On November 8, 1999 Stanford and the Port executed an Exclusive Right to Negotiate agreement ("ERN") for the initial period of November 8, 1999 to May 7, 2000, with two six-month extension options. The Port authorized further extensions of the ERN while Stanford refined the project scope and design in response to community concerns. The ERN will expire on September 14, 2002, unless further extended by the Port. To date, Stanford has paid \$200,000 to the Port in negotiation fees.

CURRENT STATUS OF THE HOTEL PROJECT

Stanford recently retained a new architect, Hornberger + Worstell, a San Francisco firm, to redesign the hotel. Stanford submitted a new design concept and accompanying financial proposal to the Port on August 1, 2002 for a hotel building that is smaller in size than the original proposal and confined

THIS PRINT COVERS CALENDAR ITEM NO. 5A

entirely to one parcel (SWL 324). It will still be a first-class, full-service hotel, of 4-1/2 star quality, with approximately 260 guest rooms, 1 restaurant, a lobby bar, gift shop, meeting rooms, banquet room, fitness center, business center and administrative offices. The proposal includes a landscaped area on Parcels A, B, D and SWL 323. The building would be 65' in height. Stanford proposes to construct a parking garage on the back parcel (SWL 322-1) for use by hotel guests and visitors to the waterfront. The structure would contain approximately 380 self-directed parking spaces, with retail shops proposed on the first floor of the garage along Broadway at Front Street. Stanford proposes to use Parcel C as surface valet parking for the hotel guests and does not plan at this time to have a structure built on it. The new hotel design recently was presented to the Northeast Waterfront Advisory Group and to Telegraph Hill Dwellers and generally received a favorable response. The ground floor of the proposed design concept is attached hereto as Exhibit B.

Port staff believes the new hotel design concept offers the advantages and disadvantages listed below. However, staff and the Port's consultant, HVS International, are still analyzing Stanford's new financial proposal, which offers less revenue than the original proposal. Additional time is needed to resolve financial issues and to reach agreement on a new term sheet. During these negotiations, the Port expects to negotiate more revenue from the project.

Advantages of Proposed New Hotel Design Concept

- Reduces size and mass of hotel to meet community concerns
- Eliminates pedestrian bridge over Davis Street
- Combines all hotel functions on one parcel for more operational efficiency
- Provides extra parking for visitors to the waterfront
- Was favorably received by two community groups
- A hotel is a public trust use. According to HVS, this site represents the only feasible hotel opportunity on Port property in the foreseeable future

Disadvantages of New Proposal

- Because there are fewer rooms, the new proposal would provide less revenue to the Port than the original proposal
- The new design does not provide as much retail or meeting room space as the original proposal

Stanford has submitted a development timeline, setting forth the schedule needed for obtaining all regulatory approvals and Commission/Board approval of the lease and development agreement. Pursuant to this timeline, staff anticipates that the Port and Stanford will execute the Development Agreement for the hotel project in July 2004 if the Commission authorizes the Executive Director to continue negotiations with Stanford.

STAFF RECOMMENDATION

In light of the many advantages of the new hotel design concept proposed by Stanford, Port staff recommends that the Port Commission authorize the Executive Director to continue negotiations with Stanford for the hotel project. As noted above, the parties have yet to reach agreement on a new term sheet based on the design concept for the smaller hotel submitted by Stanford on August 1, 2002. A critical component of those term sheet negotiations will be to increase the Port's revenue from the project. We will also determine whether all of the available parcels will be included in the project site. Once the parties have reached agreement on the term sheet, they will have to negotiate the terms of the proposed Development Agreement and Ground Lease. Further, Stanford will have to obtain a complex set of regulatory approvals for the hotel project, including Board of Supervisors approval of the Ground Lease.

Based on a realistic timeframe for accomplishing all of the negotiations and regulatory approvals, Port staff recommends that the Commission authorize the Executive Director to extend the ERN to July 31, 2004 or the date on which the Port and Stanford enter into the Development Agreement for the hotel project, whichever is earlier, subject to the following conditions:

1. By September 30, 2002, Stanford must evidence an expansion of its development team with members who are experienced and have a track record for developing properties in a complicated entitlement environment;
2. Beginning October 1, 2002, and continuing on the first day of each month throughout the extended term of the ERN, Stanford shall pay a Negotiation Fee of \$10,000 per month, which fee is non-refundable and not applicable to future rent. The fees are intended to cover the Port's present and future costs associated with staff and consultant time needed in conjunction with the hotel project. The Port's receipt of these fees are a prerequisite to further staff work on the project;
3. By January 15, 2003, Port staff and Stanford must reach agreement on a Term Sheet containing the key financial terms of the Ground Lease;
4. By April 30, 2003, Stanford must obtain approval of the project design by the *Waterfront Design Advisory Committee*;
5. By May 31, 2003, Stanford must file a complete Conditional Use Application with the Planning Department;
6. By September 30, 2003, Stanford must have the Supplemental Environmental Impact Report (SEIR) published; and
7. By March 31, 2004, Stanford must obtain certification of the Supplemental Environmental Impact Report by the San Francisco Planning Commission.

Staff recommends that the above conditions be reflected as critical benchmarks in the extended ERN and that the Port have the right to terminate the ERN without notice should Stanford fail to meet any of them.

After the Port and Stanford enter into the Development Agreement, Stanford must complete construction documents, obtain a Port building permit, submit evidence of financing and meet other requirements of the Development Agreement before the Port will convey the Ground Lease and possession of the hotel site to Stanford.

Prepared by: Jennifer Sobol
Project Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-38

- WHEREAS, Charter, Section B3.581 grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Under Charter Section B3.581 (g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, The Port owns certain properties known as Seawall Lots 323, 324 and 322-1; and
- WHEREAS, In November 1998, the Port issued a Request for Qualifications and Proposals for the lease, development and operation of a full-service, first-class hotel on said Seawall Lots; and
- WHEREAS, Stanford Hospitality, Inc. ("Stanford") submitted a response to the RFQ/P on May 18, 1999 which complied with the submittal requirements stated in the RFQ/P; and
- WHEREAS, Based on staff's and its own review, the Port Commission authorized the Executive Director to enter into exclusive negotiations with Stanford on August 10, 1999 (Resolution No. 99-62); and
- WHEREAS, The Port and Stanford executed an Exclusive Right to Negotiate agreement ("ERN") on November 8, 1999 for a period of six months, with two six-month extension options; and
- WHEREAS, Stanford exercised both extension option periods extending the ERN to May 7, 2001; and
- WHEREAS, The Port Commission subsequently authorized further extensions of the ERN, pursuant to which authorizations the ERN expires on September 14, 2002; and
- WHEREAS, Stanford has recently submitted to the Port a new design and financial proposal for a smaller hotel; and
- WHEREAS, Stanford needs additional time to negotiate a new term sheet with Port staff, obtain the required regulatory approvals and obtain Port Commission and Board of Supervisors approval of the lease and development agreement for the proposed hotel; and
- WHEREAS, Staff has determined that the revised hotel proposal submitted by Stanford has many positive attributes and recommends that the Port Commission authorize the Executive Director to extend the ERN with Stanford to July 31, 2004, subject to the conditions set forth in its Memorandum to the Port Commission dated September 4, 2002 for Item No. 5A (the "Staff Memorandum"); and now therefore, be it

- RESOLVED, That, based on staff's recommendation and its own review, the Port Commission hereby authorizes the Executive Director of the Port to extend the ERN to July 31, 2004, subject to the conditions recommended in the Staff Memorandum, by way of a Fourth Amendment to the ERN that is consistent with this resolution and in a form approved by the City Attorney's Office; and, be it further
- RESOLVED, That the Port Commission makes no representation and gives no assurance that the new proposal submitted by Stanford and to be further negotiated with Port staff will be ultimately accepted or approved by the Port Commission; and, be it further
- RESOLVED, That the Port will not enter into a final lease that would allow for the development of the project until there has been complete compliance with the California Environmental Quality Act (CEQA).

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2002.

Secretary



MEMORANDUM

September 5, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Approval of Lease Assignment from North Coast Fisheries, Inc. to Next Seafood, Inc.

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT OF NORTH COAST FISHERIES, INC. LEASE

North Coast Fisheries, Inc. is the Tenant for the premises under Port Lease No. L-12085 (the "Lease") at Pier 45, Shed D-3 where it operates a fish processing business. The term of the ten (10) year Lease commenced on September 1, 1995. The premises consist of 6,956 square feet of shed space and 1,628 square feet of non-exclusive apron space. The current monthly rent for the shed space is \$4,271.99 which equals \$0.61 per square foot. The use of the premises is for receiving, handling and processing fish and for commercial fishing and such uses as are reasonably related thereto.

North Coast Fisheries, Inc. has recently sold its business operations to Next Seafood, Inc. ("Next Seafood"), an existing subtenant at Pier 45, Shed D-9. As part of the business transaction, North Coast Fisheries, Inc. desires to assign the Lease to Next Seafood.

If the proposed assignment is approved by the Port Commission, Next Seafood intends to retain its subleased space at Shed D-9 for storage purposes while utilizing the facility acquired from North Coast Fisheries (Shed D-3) as its primary fish processing facility. Next Seafood will be utilizing its own employees to operate the fish processing facility acquired from North Coast Fisheries, Inc.

This Print Covers Calendar Item No. 6A

Next Seafood is a subtenant in good standing and is prepared to fully assume North Coast's obligations under the Lease. There are no unpaid rents that are currently due from North Coast Fisheries, Inc.

Based on the above, Staff recommends the approval of the proposed lease assignment to Next Seafood on the terms and conditions set forth in the assignment and assumption agreement on file with the Commission Secretary.

Prepared by: Mark Bryant
Commercial Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-39

- WHEREAS, Charter, Section B3.581 grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Under Charter Section B3.581 (g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, The Port owns the property located at Pier 45 Shed D ("**Shed D**"); and
- WHEREAS, The Port leased to North Coast Fisheries, Inc. ("**North Coast**") space in Shed D for use in commercial fishing and fish processing operations pursuant to Port Lease No. L-12085, a ten-year lease commencing on September 1, 1995 (the "**Lease**"); and
- WHEREAS, North Coast recently sold its business operations to Next Seafood, Inc. ("**Next**"), an existing subtenant at Shed D; and
- WHEREAS, North Coast desires to assign to Next and Next desires to assume from North Coast North Coast's right, title and interest in the Lease; and
- WHEREAS, The Lease requires the Port Commission to consent by resolution to any assignment of the Lease; and
- WHEREAS, Staff recommends that the Port Commission consent to the assignment and assumption of the Lease by North Coast and Next, respectively, in the form of the assignment and assumption agreement on file with the Commission Secretary (the "**Assignment Agreement**"); NOW THEREFORE, BE IT
- RESOLVED, Based on staff's recommendation and its own analysis, the Port Commission hereby consents to the assignment and assumption of the Lease by North Coast and Next, respectively, and authorizes the Executive Director, or his designee, to execute the Assignment Agreement with North Coast and Next.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2002.

Secretary



MEMORANDUM

September 5, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy
Hon. Pius Lee

FROM: Douglas Wong
Executive Director *DW*

SUBJECT: Approval of Assignment of Port Lease No. L-9277 from Albers Seafood, Inc. to Scoma's Restaurant Inc., for property located at Pier 47

DIRECTOR'S RECOMMENDATION: APPROVE THE LEASE ASSIGNMENT

BACKGROUND

The Port is the landlord under Port Lease No. L-9277 dated April 1, 1975 for a 61 year term with Fishermen's Wharf Seafoods as tenant. The leased Premises consist of 6,525 square feet at the end of Pier 47 (beyond Scoma's Restaurant), of which 3,085 square feet is building area and 3,440 square feet is open area.

In 1995, the Port Commission approved the assignment of the Lease to Albers Seafood, Inc. doing business as Albers Seafood, a California corporation ("Albers") under Port Lease No. L-9277, for the premises located at Pier 47. Albers currently uses the premises for storage purposes in support of its existing fish wholesaling business located in Shed B at Pier 45.

The current monthly rent is \$1,001.55, which equals \$0.32 per square foot based on the building area, or \$0.15 per square foot based on the total premises. The use of the premises is limited to "wholesale fish processing, fish storage, marine food preparation and such other uses as are reasonably related thereto."

Albers has made the business decision to downsize its storage facilities. To facilitate this goal, Albers desires to assign Lease No. L-9277 to Scoma's Restaurant, Inc. Section 10 of the Lease requires the consent of the Port Commission for a lease assignment, which consent may not be unreasonably withheld.

THIS PRINT COVERS CALENDAR ITEM NO. 6B

Albers is a tenant in good standing and has consistently observed the terms and conditions of its tenancy at this location. Scoma's Restaurant Inc. is a tenant in good standing and is prepared to assume the responsibilities of this lease assignment to include substructure repairs that were identified by a recent inspection conducted by the Port's Engineering Department. Scoma's will be utilizing the premises as storage in support of their existing restaurant operations. Albers will not be released from the Lease under the terms of the assignment.

Staff recommends the approval of the proposed lease assignment to Scoma's Restaurant, Inc.

Prepared by: Mark Bryant, Commercial Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-40

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Under Charter Section B3.581(g), leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, Port Commission approval is being sought for the lease assignment of Lease No. L-9277 from Albers Seafood, Inc., doing business as Albers Seafood to Scoma's Restaurant, Inc.; now therefore, be it
- RESOLVED, that the San Francisco Port Commission hereby approves and directs the Executive director or his designee to execute all necessary consents and documents necessary to approve the lease assignment of Lease No. L-9277 to Scoma's Restaurant, Inc, so long as the Port receives adequate assurances as determined by the Executive Director in consultation with the City Attorney that Scoma's Restaurant, Inc. will undertake the necessary substructure repairs required under the terms of this Lease.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2002.

Secretary

55
10/02
endum

SAN FRANCISCO PORT COMMISSION

REGULAR MEETING
4:00 P.M., TUESDAY, SEPTEMBER 10, 2002
BAYSIDE CONFERENCE ROOM
PIER 1, SAN FRANCISCO, CA 94111

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ADDENDUM

8. EXECUTIVE SESSION

B. CLOSED SESSION:

- (2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

**This session is closed to any non-City/Port representative.*

- e. Property: Rincon Park
Person Negotiating: Port: Alex Lee, Director of Engineering & Maintenance
San Francisco Redevelopment Agency: Amy Neches

Under Negotiation: Price Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Rincon Park.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

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SAN FRANCISCO PORT COMMISSION

SEPTEMBER 10, 2002 MINUTES OF THE REGULAR MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE McCARTHY
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO

PORT COMMISSION

MINUTES OF THE MEETING SEPTEMBER 10, 2002

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:02 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy, Brian McWilliams and Pius Lee.

2. APPROVAL OF MINUTES - August 27, 2002 Regular Meeting

Commissioner McWilliams made some corrections to page 5 of the minutes.

ACTION: Commissioner McCarthy moved approval with Commissioner McWilliams corrections; Commissioner Lee seconded the motion. All of the Commissioners were in favor. The minutes of the August 27, 2002 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Wong reported the following:

- Proclamation for Charlie Piazza (25 years of City Service)
Mr. Wong thanked Mr. Piazza for his many years of service at the Port. Commissioner Hardeman read the proclamation of appreciation for the record and presented the plaque to Mr. Piazza. Mr. Piazza thanked the Commission for the commendation.
- San Francisco Grand Prix 2002 Bicycle Race
The City of San Francisco will host a professional Grand Prix Bike Race for the second consecutive year. The San Francisco Grand Prix, featuring Lance Armstrong, will be held on September 15, 2002. The Grand Prix is a 110-mile circuit ride that is split into 3 beginning laps, 10-mile loops and a final five 5-mile loop. The start and finish of the race will be along the Northbound Embarcadero by Pier 1, North of the Ferry Building. The majority of the racecourse is along the streets in the northern portion of the City. The police estimates the attendance (based on last year's race) to be up to 400,000. The race is scheduled to begin at 8:30 AM and will end at 2 PM. From 7 AM to 8 AM, amateur cyclists will be allowed to ride one lap of the 5-mile course before the professional race begins. The race will be televised live on KGO – TV.
- Port of San Francisco's Record Cruise Business in 2003
The Port announced the finalized 2003 cruise schedule that will show the biggest passenger volumes at the Port in 17 years. Three major cruise lines have announced itineraries based in San Francisco. Princess Cruises, Celebrity Cruises and Crystal Cruises each will homeport vessels next year bringing more than 110,000 passengers and 62 cruise voyages embarking from the Port. Princess Cruises confirmed that they

recently acquired two 700-passenger ships from a line that was servicing Tahiti and will home port one of the ships at the Port next year. This ship, renamed the Pacific Princess, will sail round trip to Alaska every 11 days throughout the summer. Celebrity Cruises also confirmed that they will begin test marketing weekly California Coastal cruises aboard the Celebrity Mercury every Sunday out of San Francisco starting in September next year through 2004. More significantly, next year will be the first time in more than 30 years that the Port's cruise terminal will operate all 12 months out of the year. The impacts to the City's visitor and maritime industries will be significant with projected local economic impact exceeding \$50 million in wages and benefits, direct purchases of goods & services, and state & local taxes. Mr. Wong thanked Peter Dailey and his Maritime staff, particularly Gerry Roybal, Mike Nerney, John Davey, and Denise Turner for their efforts in bringing this business to the Port.

Commissioner Brandon also acknowledged the efforts of the Maritime staff and thanked them on behalf of the Commission.

B. Request for approval of Resolution seeking San Francisco Board of Supervisors' concurrence in opposing Federal intervention in the collective bargaining process between the International Longshore and Warehouse Union and the Pacific Maritime Association. (Resolution No. 02-41)

Commissioner McWilliams indicated that the Commission has the responsibility to do the best thing for the citizens and the business interests of San Francisco. The unfortunate tragedy of 9/11 would evoke a response like this from the federal government which in a reactionary way, threatens our civil rights and collective bargaining rights that have been granted through the Bill of Rights, the Constitution and the National Labor Relations Act. This is of great concern for all of us and it is something that we would hate to see revisited. The same kind of interaction was experienced in 1934. The 1948 and 1972 administrations have unsuccessfully tried to intervene in the labor relations process that workers were entitled to, specifically on the West Coast waterfront. The intent of the resolution is for the Port Director to seek Board of Supervisors concurrence and inform the Administration of our opposition to any kind of federal intervention in the collective bargaining process. Federal intervention would be an overreaction to the terrible tragedy. Our First Amendment Rights are being violated in the process. People need to speak up against this and ensure that the waterfront does not see the kind of terrible results that not only happened in 1934 but also in all parts of the world whenever the federal government intervenes in the collective bargaining process.

Clarence Thomas, Secretary-Treasurer of ILWU Local 10, indicated that on August 12, Mayors, Governors and Senators attended rallies along the Pacific Coast. Senator Tom Daschle, the majority leader of the Senate, spoke in favor of the ILWU's right to collective bargaining and spoke against the Bush Administration intervening in the collective bargaining process. The Governor of Washington State wrote a letter to the President asking him to stay out of the negotiation. In part, the letter states... "The ILWU and the PMA have an outstanding record of providing efficient operation at West Coast Ports especially in times of war, emergency and national crisis. They have successfully settled every contract negotiation for the last three decades without disruption to the transportation of goods. I urged the Administration not to intervene in the ongoing labor

negotiations, as such intervention would be harmful to the swift resolution of the labor dispute. I strongly believe that the parties should be left to resolve their differences at the bargaining table." Four members of the House of Representatives have signed on to a letter that was written by Congressman George Miller urging the Bush Administration to cease and desist their intervention into their negotiations. Nine senators including Boxer, Feinstein and Kennedy have also sent such letters to the Bush Administration. He urged the Commission to act affirmatively on this motion. As Commissioner McWilliams so strongly stated, they do not want to turn back the clock to what existed in 1934.

Frank Riley, ILWU Local 34, spoke in favor of the resolution and concurred with Mr. Thomas and Commissioner McWilliams comments. He pointed out that PMA and ILWU are both headquartered in San Francisco. The City would be negatively impacted if the federal government intervenes in the process. He urged the Commission to support the resolution.

Kevin Gibbons, ILWU Local 10, mentioned about the importance of this resolution especially since there will be an increase of cruise vessels calling at the Port in the next couple of years. Mr. Thomas also mentioned that the Governor of California has recently written a letter to the President urging him not to intervene. More & more people are joining them in their efforts to oppose federal government intervention. He asked the Commission to approve the resolution.

ACTION: Commissioner McCarthy moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor. Resolution No. 02-41 was adopted.

4. ADMINISTRATIVE SERVICES

A. Request for approval of revisions to the Port's Fiscal Year 2002/2003 Operating Budget. (Resolution No. 02-37)

Mr. Joel Robinson, Director of Administrative Services, presented the item and requested Commission's approval. He also acknowledged the efforts of his staff in putting together the revised budget.

Commissioner Hardeman thanked Mr. Robinson and his staff for the briefing they provided the Commission regarding the budget.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. Resolution No. 02-37 was adopted.

5. PLANNING & DEVELOPMENT

A. Request for approval of Extension of Exclusive Negotiations for the Embarcadero Hotel Project at Broadway on Seawall Lots 323, 324 and 322-1. (Resolution No. 02-38)

Ms. Jennifer Sobol, Project Manager, presented the item and requested Commission's approval.

Todd Motoyama, Stanford Hotels, requested that the \$10,000 per month negotiation fee be reduced or be applied to future rent since Stanford has already paid \$200,000 in negotiation fees to the Port since August 1999.

Ms. Sobol replied that the \$10,000 negotiation fee is reasonable and an appropriate fee to tie up this valuable site.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. Resolution No. 02-38 was adopted.

6. REAL ESTATE

- A. Request for approval of lease assignment from North Coast Fisheries, Inc. to Next Seafood, Inc. at Pier 45 Shed D. (Resolution No. 02-39) **This item was taken off the calendar.**
- B. Request for approval of lease assignment from Albers Seafood, Inc. to Scoma's Restaurant at Pier 47. (Resolution No. 02-40) **This item was taken off the calendar.**

7. NEW BUSINESS/PUBLIC COMMENT

8. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner McWilliams moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

At 4:38 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City and County of San Francisco, et al., San Francisco Superior Court Case No. 318360, filed January 25, 2001.
(Discussion and Action Item)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

This session is closed to any non-City/Port representative. *

- a. Property: Pier 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Joe Gerace
This item was taken off the calendar.
- b. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*National Park Service: George Turnbull
*Bay Area Center for Arts & Technology: William Strickland
- c. Property: 160 Jefferson Street (Lease No. 7495)
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Alioto Fish Company: Nunzio Alioto
- d. Property: Alioto Restaurant #8 @ Taylor Street (Lease No. 7491)
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Alioto Fish Company: Nunzio Alioto
- e. Property: Rincon Park
Person Negotiating: Port: Alex Lee, Director of Engineering & Maintenance
*San Francisco Redevelopment Agency: Amy Neches

9. RECONVENE IN OPEN SESSION

At 6:15 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

Commissioner Brandon reported that the Commission, at its August 27, 2002 meeting, approved the settlement agreement between the Port and Bistro Z principals, Sheila Zaki and Seifi Zaki.

ACTION: Commissioner Brandon moved approval not to disclose any information discussed in today's executive session; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

10. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:15 p.m.



NOTICE OF CANCELLED MEETING

The following Regular Port Commission Meeting has been cancelled:

SEPTEMBER 24, 2002 @ 4 P.M.

The next Port Commission Meeting is scheduled on:

OCTOBER 8, 2002 @ 4 P.M.

DOCUMENTS DEPT.

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**SAN FRANCISCO
PORT COMMISSION**

DOCUMENTS DEPT.

**REGULAR MEETING
4:00 P.M., TUESDAY, OCTOBER 8, 2002
BAYSIDE CONFERENCE ROOM
PIER 1, SAN FRANCISCO, CA 94111**

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The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public are posted on the Port's Website at www.sfport.com.

AGENDA

1. **ROLL CALL**
2. **APPROVAL OF MINUTES** - September 10, 2002 Regular Meeting
3. **EXECUTIVE**
 - A. Executive Director's Report
 - Fleet Week
4. **CONSENT**
 - A. Request for authorization to accept and expend \$106,686 in grant funds from the California Resources Agency-Coastal Impact Assistance Plan for the Ferry Terminal Public Pier Project. (Resolution No. 02-43) (Staff report provided to the Commission.)
5. **ADMINISTRATIVE SERVICES**
 - A. Request for a supplemental appropriation to authorize expenditure of funds received from the developer for Port costs associated with the negotiations of the Disposition and Development Agreement and related documents for the James R. Herman International Cruise Terminal and Mixed Use Development Project. (Resolution No. 02-42) (Staff report provided to the Commission.)
 - B. Request for authorization to issue Request for Proposals for professional services to assist the Port to prepare an analysis of the balance of payments and services between the Port and City general fund departments. (Resolution No. 02-44) (Staff report provided to the Commission.)
6. **FACILITIES & MAINTENANCE**
 - A. Request for authorization to award Construction Contract No. 2672, Pier 70 Wharf 5 Demolition Project, to Zaccor Companies Inc. (Resolution No. 02-45) (Staff report provided to the Commission.)

- B. Request for authorization to advertise for competitive bids for the construction of the Downtown Ferry Terminal Public Pier. (Resolution No. 02-46) (Staff report provided to the Commission.)

7. REAL ESTATE

- A. Request for approval of assignment of Lease No. L-7495 affecting property known as 160 Jefferson Street on Seawall Lot 3010 from Alioto Fish Company, Ltd. to Boudin Properties, Inc. (Resolution No. 02-47) (Staff report provided to the Commission.)
- B. Request for approval of Lease No. L-13243 with Butler Enterprise Group, L.L.C. for the development and operation of a restaurant at 601 Cesar Chavez Street. (Resolution No. 02-48) (Staff report provided to the Commission.)

8. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to all Commissioners for review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

9. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.
- B. CLOSED SESSION

- (1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 26
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*International Museum of Women: Elizabeth Colton

Under Negotiation: Price Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 26.

- b. Property: Pier 92
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Pacific Cement: Rick Ramirez

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 92.

c. Property: Pier 7

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Waterfront Restaurant: Al Falchi

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 7.

d. Property: SWL 301

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*S.P. Tarantino Insurance: Don Tarantino

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 301.

e. Property: Franciscan Parking Lot @ Pier 43-½

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Franciscan Restaurant: Kevin Westlye

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 43-½.

f. Property: Pier 45B

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Cohan Seafood Co., Inc.: Barry Cohan

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 45B.

g. Property: Pier 17

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Oracle/BMW Racing: Eric Kennedy

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 17.

h. Property: 10 Lombard @ SWL 318

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Technologic Partners, Inc.: Richard Schaffer, Principal

Under Negotiation: ___ Price ___ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 318.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTERS (Discussion and Action Items):

- a. Discuss existing litigation matters pursuant to subdivisions (a) and (d) of the California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(D) (2 cases).
 - Claimant Marguerite Kuckenbecker v. City and County of San Francisco, San Francisco Administrative Claim No. 02-03834, filed June 5, 2002. Discussion and approval of proposed settlement of administrative claim seeking damages of \$30,740.00 as a result of water intrusion and property damage in premises leased to the claimant. Proposed settlement for payment of \$24,700 in exchange for claimant's full release and dismissal of claims.
 - Claimant National Railroad Passenger Corporation dba Amtrak v. City and County of San Francisco, San Francisco Administrative Claim No. 02-04198, filed December 24, 2001. Discussion and approval of proposed settlement of administrative claim seeking damages of \$29,143.89 as a result of water intrusion and flooding in premises leased to the claimant. Proposed settlement for payment of \$29,143.89 in exchange for claimant's full release and dismissal of claims, excluding potential indemnity claim related to health-related injuries asserted by claimant's employees.

10. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

Vote on whether to approve proposed settlement of administrative claim of Marguerite Kuckenbecker v. City and County of San Francisco, San Francisco Administrative Claim No. 02-03834. (Also listed above, Closed Session, Item No. (2a).)

Vote on whether to approve proposed settlement of administrative claim of National Railroad Passenger Corporation dba Amtrak v. City and County of San Francisco, San Francisco Administrative Claim No. 02-04198. (Also listed above, Closed Session, Item No. (2a).)

11. ADJOURNMENT

OCTOBER/NOVEMBER/DECEMBER 2002
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
October 8	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
October 22	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
November 12	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
December 10	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Fisherman's Wharf Environmental Quality Advisory Committee (EQAC) will be held on the fourth Wednesday of the month, at 9:00 a.m. at Scoma's Restaurant, Pier 47. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on the third Thursday, every other month at 11:30 a.m. in Bayside 1 @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:00 to 7:00 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 - 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

October 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to accept and expend \$106,686 in grant funds from the California Resources Agency-Coastal Impact Assistance Program (CIAP) for the Downtown Ferry Terminal Public Pier project.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION AUTHORIZING EXECUTIVE DIRECTOR TO ACCEPT AND EXPEND GRANT FUNDS FROM THE CALIFORNIA RESOURCES AGENCY- COASTAL IMPACT ASSISTANCE PROGRAM (CIAP) FOR THE FERRY TERMINAL PUBLIC PIER PROJECT.

The California Resources Agency – Coastal Impact Assistance Program (CIAP): The California Resources Agency is responsible for the conservation, enhancement, and management of California's natural and cultural resources, including land, water, wildlife, parks, minerals, and historic sites. The purpose of the CIAP is to assist states and local communities in mitigating the impacts of Outer Continental Shelf oil and gas development and production. Congress appropriated \$150 million under the CIAP to the seven offshore oil and gas producing states of Alabama, Alaska, California, Florida, Louisiana, Mississippi and Texas. Under this program, The Port of San Francisco applied for and was awarded a \$106,686 grant for the Ferry Terminal Public Pier Project in May 2001.

Project Description. The proposed Ferry Terminal Public Pier Project is an element of the Downtown Ferry Terminal Project, currently under construction. Southern berths at the Downtown Ferry Terminal will be protected from winter storm surge by the new, freestanding breakwater, which the Port completed in July 2001 at a cost of \$3 million. The proposed Public Pier Project would finish the top of the breakwater with public pedestrian improvements and connect it to Herb Caen Way (the Embarcadero Promenade).

This Print Covers Calendar Item No. 4A

The proposed Public Pier would take advantage of its unique condition, utilizing a needed breakwater as a landmark public access fishing recreation pier. Under the project, the Port would construct an approximately 100-foot pier extension to connect the freestanding breakwater to the Embarcadero Promenade, and a circular terminus would be added at the other end of the pier, 600-feet out into the Bay. This project will allow visitors to walk out over the Bay and fish, view interpretive signage about ferry activities, Bay currents and habitat, observe ferry activities in the new, adjacent harbor, and enjoy views back to the City and Bay Bridge.

The breakwater is designed and built to support public access. The concrete topping slab installed on the breakwater is the final finished pavement for the public pier. Conduit is located within the slab for pedestrian lighting, and railing brackets were placed within the topping slab.

Environmental Review. On August 8, 1997, the San Francisco Planning Department adopted a final negative declaration, finding that there is no substantial evidence that the project could have a significant effect on the environment. The Negative Declaration included the breakwater structure as well as an Embarcadero Promenade extension and a connecting 160' foot trestle structure to allow public access. A copy of the Negative Declaration is on file with the Secretary of the Port Commission for this item.

Regulatory Approvals. The Downtown Ferry Terminal Public Pier has received all the needed regulatory approvals from BCDC, the Army Corp of Engineers, and the Regional Water Quality Control Board. The Project is designed, permitted, fully approved and is ready to be constructed. It is an implementation project of the Port's *Waterfront Land Use Plan*, and is supported by BCDC, the California State Coastal Conservancy, the Association of Bay Area Governments, Save San Francisco Bay Association, and other agency and citizen groups.

Project Funding. The total cost of the Public Pier improvements is estimated to be about \$1.45 million. The Port was recently successful in securing several grants for this project bringing the total anticipated available funding to \$1.455 million. The attached resolution would authorize the Port to accept and expend for the remaining \$106,686 that should complete the project funding and allow the Port to bid the project for construction.

Funding Sources

California Coastal Conservancy	\$400,000
Port Capital	300,000
ABAG Bay Trail	200,000
California Resources Agency – CIAP	106,686
DPW Pedestrian impact Funds	50,000
CA Transportation Comm EEM Grant	200,000
Wildlife Conservation Board	200,000
Total:	\$1,456,686
Total estimated project cost:	\$1,450,000

Project Schedule. The Port's Engineering Division is seeking Commission authorization to advertise for the first phase of Public Pier improvements and to construct the substructure. The pedestrian improvements would be constructed in the final phase of construction that would follow in early 2003 with completion expected by late summer, 2003.

Commission Action. Port staff seeks Commission authorization for the Executive Director to accept and expend \$106,686 in grant funds from the California Resources Agency for the Ferry Terminal Public Pier project. Port Commission authorization is required before the Port can seek Board of Supervisors authorization to accept and expend grant funding for the Public Pier Project.

Prepared by:
Dan Hodapp, Senior Waterfront Planner

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-43

- WHEREAS, The California Resources Agency -Coastal Impact Assistance Program (CIAP) was prepared in response to HR 5344 (The Commerce, Justice, State Fiscal Year 2001 Appropriations Act), which details a comprehensive partnership between the federal government, the State of California, and 20 local coastal governments to support significant improvements for the coast; and
- WHEREAS, The Ferry Terminal Public Pier Project (the "Project"), which will add public access on top of a required breakwater constructed to protect new berths from winter storm damage, was found eligible for funding under the CIAP; and
- WHEREAS, The Port of San Francisco applied for and was awarded \$106,686 in CIAP grant funds from the California resources Agency; and
- WHEREAS The Public Pier Project has received approval from both the Port and the Bay Conservation and Development Commissions; and
- WHEREAS, The Public Pier Project has received permits from the Bay Conservation and Development Commission, the Regional Water Quality Control Board, and the Army Corps of Engineers; and
- WHEREAS, On August 8, 1997, the San Francisco Planning Department adopted a final negative declaration, finding that there is no substantial evidence that the project could have a significant effect on the environment; and
- WHEREAS, The San Francisco Port Commission has reviewed the Negative Declaration and based upon its review has determined that there is no substantial evidence that the project could have a significant effect on the environment; now therefore be it
- RESOLVED, That the San Francisco Port Commission has reviewed and considered the Negative Declaration and incorporates herein the findings made in the Negative Declaration that the Downtown Ferry Terminal Project described therein will not have a significant effect on the environment; and be it further
- RESOLVED, That based on the foregoing, the Port Commission hereby finds that: (1) the Project is within the scope of the project analyzed in the Negative Declaration does not raise any important new issues about the significant effects on the environment not previously considered Negative Declaration; (2) no changes are proposed or have occurred in the Project that would require major revisions to the Negative Declaration due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken that would require

major revisions to the Negative Declaration due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; and (4) no new information of substantial importance has become available since the Negative Declaration was certified indicating that the Project will have one or more significant effects on the environment; and be it further

RESOLVED, That the San Francisco Port Commission does hereby authorize the Executive Director, to accept, and expend One Hundred Six Thousand Six Hundred Eighty Six Dollars (\$106,686) in Coastal Impact Assistance Program grant funds with the California Resources Agency for the Public Pier Project; and, be it further

RESOLVED, That the Executive Director is hereby authorized to execute such additional documents or take such additional actions as is necessary to implement the construction and completion of the Project, including, if appropriate, indemnifying the State or Federal Government for liability associated with the Project to the extent approved by the City's Risk Manager and the City Attorney's Office.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 8, 2002.

Secretary



MEMORANDUM

September 25, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Request for a supplemental appropriation to authorize expenditure of funds received from developer for Port costs associated with the negotiation of the DDA and related documents for the James R. Herman International Cruise Terminal and Mixed Use Development Project.

DIRECTOR'S RECOMMENDATION: AUTHORIZE THE EXECUTIVE DIRECTOR TO REQUEST A SUPPLEMENTAL APPROPRIATION TO AUTHORIZE EXPENDITURE OF FUNDS PROVIDED BY THE DEVELOPER FOR COSTS ASSOCIATED WITH THE NEGOTIATION OF THE DDA AND RELATED DOCUMENTS FOR THE INTERNATIONAL CRUISE TERMINAL AND MIXED USE DEVELOPMENT PROJECT.

Background:

On May 25, 1999, the Port Commission approved Resolution No. 99-36, authorizing Port staff to issue a Request for Qualifications/Proposals for the design and development of the Bryant Street Pier Project, including the James R. Herman International Cruise Terminal, on Piers 30-32 and Seawall Lot 330 ("the project").

On January 11, 2000, after an extensive review and evaluation of the qualifications and proposals received, the Port Commission approved Resolution No. 00-03, authorizing Port staff to enter into exclusive negotiations with San Francisco Cruise Terminal LLC ("SFCT") for development of the project. The Port and SFCT ("Developer") signed an Exclusive Right to Negotiate (the "ERN") on January 25, 2000. The ERN allowed two additional option periods of six months each. SFCT exercised both of the options and extended the term of the ERN to October 24, 2001.

This Print Covers Calendar Item No. 5A

On October 18, 2002, the Port Commission approved Resolution No. 01-78, authorizing Port staff to extend the ERN to July 24, 2002.

On June 25, 2002, the Port Commission approved Resolution No. 02-23, authorizing Port staff to enter into an amendment of the ERN with SFCT pursuant to the general terms set forth in a Term Sheet signed on June 25, 2002. The Term Sheet provides, among other things, for:

- a. the extension of the ERN to April 24, 2003;
- b. the satisfaction of certain performance benchmarks tasks to be accomplished on or before September 24, 2002; and
- c. the payment to the Port of \$150,000 to cover all reasonable Port costs associated with the negotiation of the Disposition and Development Agreement (DDA) and related transaction documents. These transaction costs will be applied to attorney and consultant work during the first 120 days of negotiation, and will be subject to readjustment and replenishment as agreed to by the parties thereafter. Any unused funds will be returned to SFCT.

Request and Recommendation:

SFCT has been paying the \$150,000 to the Port in installments in accordance with the amended ERN. However, in order for the Port to expend the funds received from SFCT to pay for costs associated with the negotiation of the International Cruise Terminal and Mixed Use Development project DDA and related transaction documents, the Port must request a supplemental appropriation through the Mayor and the Board of Supervisors. Port staff estimates that during the first 120 days of negotiation, the \$150,000 will be needed to cover the costs of attorney work, the cost of the Mayor's Office of Economic Development staff time, and the costs of consultant work. Port staff therefore requests approval to process a supplemental appropriation in accordance with the attached form for:

CPO667-03	Pre-Development Studies	\$ 40,000
081CT	City Attorney – Legal Services (work order)	\$100,000
081ED	Mayor's Office of Economic Development (work order)	<u>\$ 10,000</u>
TOTAL		<u>\$150,000</u>

Port staff recommends that the Port Commission direct the Port Executive Director to request a supplemental appropriation as outlined above.

Prepared by: Lawrence Brown, Financial Analyst

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-42

- WHEREAS, On September 25, 2000, the Port and San Francisco Cruise Terminal LLC ("SFCT") executed an Exclusive Right to Negotiate ("ERN") agreement for the design and development of a first-class "James R. Herman International Cruise Terminal" and Mixed-Use Development at Piers 30-32 and Seawall Lot 330 (together, the "Bryant Street Pier Project"); and
- WHEREAS, The initial ERN period was for a period of nine months, with two six-month extension options; and
- WHEREAS, On October 25, 2002, SFCT exercised the first extension option period, and on April 25, 2001 SFCT exercised the second extension option period; and
- WHEREAS, On October 19, 2001, the Port and SFCT executed the first Amendment to the ERN for a period of up to eighteen months; and
- WHEREAS, On July 10, 2002, the Port and SFCT executed the second Amendment to the ERN on the general terms set forth in a term sheet signed between the Port and SFCT on June 25, 2002, including:
- a) extension of the exclusive negotiation period to April 24, 2004;
 - b) satisfaction of certain performance benchmark tasks to be accomplished on or before September 24, 2002;
 - c) payment to the Port upon execution of the Term Sheet of all reasonable Port costs associated with the negotiation of the Disposition and Development Agreement and related transaction documents. These transaction costs will initially be in the amount of \$150,000 and be applied to attorney and consultant work during the first 120 days of negotiations, subject to readjustment and replenishment as agreed by the parties thereafter; and
- WHEREAS, In order for the Port to expend the funds received from SFCT to pay for attorney and consultant work associated with the negotiation of the Disposition and Development Agreement and related transaction documents for the Bryant Street Pier Project, a supplemental appropriation must be processed; now, therefore, be it
- RESOLVED, That the Port Commission authorizes the Executive Director to request to the Mayor and Board of Supervisors for approval, a supplemental appropriation for \$150,000 to pay for attorney and consultant work associated with the negotiation of the Bryant Street Pier Project Disposition and Development Agreement and related transaction documents.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 8, 2002.

Secretary



MEMORANDUM

October 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Request for authorization to issue a Request for Proposals (RFP) for professional services to assist the Port to prepare an analysis of the balance of payments and services between the Port and City general fund departments.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION AUTHORIZING EXECUTIVE DIRECTOR TO ISSUE A REQUEST FOR PROPOSALS FROM QUALIFIED VENDORS.

At the September 10, 2002 meeting the Port Commission approved the revised FY 2002/03 Operating Budget which includes a \$2 million set aside to reimburse the City for legally eligible costs of services to Port as determined by a study to be undertaken this fiscal year. During this meeting Port staff informed the Commission that at a later date staff would request the Commission's approval and authorization for the Port to request proposals from consultants to assist the Port in determining the balance of payments and services between the Port and the City general fund departments. Staff also explained that Port staff would meet with the Commission regularly to brief the Commission regarding the methodology and preliminary findings. If the Port owes the City additional reimbursements then the amount will be deducted from the \$2 million set aside.

The Port along with representatives from the Mayor's Office, Controller's Office, and the City Attorney has formed a committee to oversee this study. The committee has determined that an outside, independent consultant will be necessary to conduct this study. The study will thoroughly review the Port's contributions to the City through direct payments, tax receipts and in-kind contributions and the City's cost of providing services to Port tenants, uses and activities. The consultant's services will be funded from the carry forward operating funds. Port staff, therefore, recommends that the Port Commission authorize the Executive Director to issue a Request for Proposals from qualified vendors.

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Port staff is requesting the Port Commission to allow the Executive Director to issue a Request For Proposals (RFP) for professional services that will allow the staff to hire a consulting firm to conduct the study. The amount of the contract will not be known until proposals are received, and staff anticipates seeking Commission authorization to award the contract at the Port Commission's November 12, 2002 meeting.

Prepared by: Joel Robinson,
Administrative Services Director

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-44

- WHEREAS, the Port Commission, in its Resolution No. 02-37, approved the revised operating budget which includes a \$2 million set aside to reimburse the City for legally eligible costs of services to the Port as determined by a study to be undertaken this fiscal year; and
- WHEREAS, the Port and representatives from the Mayor's Office, Controller's Office, and the City Attorney have formed a committee to oversee this study; and
- WHEREAS, the committee has determined that an outside, independent consultant will be necessary to conduct this study; and
- WHEREAS, this study is intended to determine the balance of Port contributions to the City through direct payments, tax receipts and in-kind contributions and the City's cost of providing services to Port tenants, uses and activities; and now, therefore be it
- RESOLVED, that the Executive Director is hereby authorized to issue a Request for Proposals from qualified vendors for an analysis of the balance of payments and services between the Port and the City.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 8, 2002.

Secretary



MEMORANDUM

October 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Request for Authorization to Award Construction Contract No. 2672, Pier 70 Wharf 5 Demolition Project, to Zaccor Companies Inc.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO AWARD THE PIER 70 WHARF 5 DEMOLITION PROJECT, CONTRACT NO. 2672, TO ZACCOR COMPANIES INC.

Introduction

Port staff requests that the Commission authorize the award of construction Contract No. 2672, "Pier 70 Wharf 5 Demolition Project," to Zaccor Companies Inc., the lowest responsive responsible bidder. The scope of the project includes demolition and disposal of Pier 70 Wharf 5, a wharf approximately 50 feet wide by 820 feet long, as set forth in the construction documents.

Background

Wharf 5 at Pier 70 is a part of the SF Drydock leasehold and has not been used for years. Past inspections have revealed that some sections of Wharf 5 have partially collapsed, and the wharf continues to deteriorate. Debris from Wharf 5 has been found in the nearby area, creating a hazard to navigation and a potential liability for the Port. The entire wharf is in danger of collapse and should be demolished as soon as possible. To accomplish this, the Port Commission, at its meeting on July 9, 2002, authorized staff to advertise for bids for the demolition of Wharf 5. (Port Commission Resolution 02-25.)

The Human Rights Commission Staff set subcontracting goals for the MBE is 9%, and the WBE is 5% for the project. On August 28, 2002, Port staff published an invitation for bids for a contract to demolish Wharf 5. Port Staff received five bids on September 27, 2002. The Port Engineering Staff and the Human Rights Commission Staff reviewed the bids and has determined that Zaccor

This Print Covers Calendar Item No. 6A

Companies Inc. is the lowest responsive, responsible bidder. Zaccor Companies Inc.'s bid price is \$439,000, met the MBE/WBE goals. A summary of the bids is attached

Port staff obtained necessary permits from the U. S. Army Corps of Engineers in September 2002 and the permit from the Bay Conservation and Development Commission (BCDC) in July 2002.

Funding

The project cost will be funded with Port capital funds from the pier repair fund.

Summary

Port staff recommends that the Commission authorize the award of the contract to Zaccor Companies Inc. for the amount of \$439,000, plus a 10% contingency of \$43,900. Staff also recommends that the Commission authorize the Executive Director to accept the work once it is complete.

Prepared by: Ken Chu, Project Engineer, for
Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 02-45**

- WHEREAS, the Port Commission previously authorized the advertisement of the construction contract for Pier 70 Wharf 5 Demolition Project, Contract No. 2672, at its meeting on July 9, 2002; and
- WHEREAS, Port staff received five bids on September 27, 2002; and
- WHEREAS, the Port Engineering Staff and the Human Rights Commission Staff reviewed the bids and has determined that Zaccor Companies Inc. is the lowest responsive, responsible bidder; and
- WHEREAS, Zaccor Companies Inc.'s bid price is \$439,000, met the MBE/WBE goals; and
- WHEREAS, Port staff obtained necessary permits from the U. S. Army Corps of Engineers in September 2002 and the permit from the Bay Conservation and Development Commission (BCDC) in July 2002; and
- WHEREAS, the project cost will be funded with Port capital funds from the pier repair fund; now therefore be it,
- RESOLVED, the Port Commission hereby authorizes Port staff to award the construction contract Pier 70 Wharf 5 Demolition Project, Contract No. 2672, to Zaccor Companies Inc. for the amount of \$439,000, plus a 10% contingency of \$43,900; and be it further
- RESOLVED, the Port Commission hereby authorizes the Executive Director to accept the work once it is complete.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 8, 2002.

Secretary

**BID SUMMARY
PORT OF SAN FRANCISCO**

Project: Pier 70 Wharf 5 Demolition
Contract N2672

Project Engineer: Ken Chu
Bids Opened: 27-Sep-02

Bid Item No.	Description/Unit	Bidder Name Address City, State, Zip Phone #	Zaccor Companies Inc. 2900 Main Street Alameda, CA 94501 510-522-6210	Vortex Diving Inc. Livingston Street Pier Oakland, CA 94606 510-261-2400	Ferma Corporation 1265 Montecito Ave, Ste 200 Mountain View, CA 94043 650-961-2742	Soil Enterprises, Inc P. O. Box 733 Brentwood, CA 94513 925-516-1111	Dutra Construction Co., Inc 1000 Point San Pedro Road San Rafael, CA 94901 415- 258 - 6876
			Amount	Amount	Amount	Amount	Amount
1	Mobilization		\$30,000.00	\$25,000.00	\$200,000.00	\$32,000.00	\$225,000.00
2	Demolition		\$259,000.00	\$275,750.00	\$350,000.00	\$450,839.00	\$340,000.00
3	Disposal		\$150,000.00	\$219,000.00	\$45,000.00	\$175,720.00	\$432,200.00
	TOTAL BID PRICE (Summation of Bid Items 1 through 3)		\$439,000.00	\$519,750.00	\$595,000.00	\$658,559.00	\$997,200.00



MEMORANDUM

October 1, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DFW*
Executive Director

SUBJECT: Authorization to advertise for competitive bids for construction of Downtown Ferry Terminal Public Pier, Contract No. 2679.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF DOWNTOWN FERRY TERMINAL PUBLIC PIER, CONTRACT NO. 2679.

Introduction

Port staff requests Commission authorization to advertise for competitive bids for construction contract No. 2679, Downtown Ferry Terminal Public Pier Project. Under this project, the Port would provide required public access improvements through construction of a 100-foot pier extension to connect the Embarcadero Promenade to the recently constructed freestanding breakwater, and a circular terminus at the end of the pier, which extends 600-feet into the Bay. This project will allow visitors to walk out over the Bay, fish, view interpretive signage about ferry activities, Bay currents and habitat, and observe ferry activities in the new, adjacent harbor, and enjoy views of the City and Bay Bridge.

Background

The new, freestanding breakwater, which the Port completed in July 2001, serves to protect the recently constructed southern berths at the Downtown Ferry Terminal from winter storm surge. The proposed Public Pier Project would finish the top of the breakwater with public pedestrian improvements and connect it to Herb Caen Way (The Embarcadero), to provide public access.

The proposed Public Pier would take advantage of its unique condition, utilizing a needed breakwater as a landmark public access fishing and recreation pier.

The breakwater, as constructed, has been designed to accommodate the proposed public access improvements. The concrete topping slab serves as the finished pavement for the public pier,

This Print Covers Calendar Item No. **6B**

conduit is embedded within the slab for pedestrian lighting, and railing brackets are located in the topping slab. On August 8, 1997, the San Francisco Planning Department adopted a final negative declaration, finding that there is no substantial evidence that the project could have significant effect on the environment. A cross-functional Port staff team has been working to complete the design of this project. Staff is now in the process of preparing the final construction documents in anticipation of bidding the construction project.

Funding

The total cost of the Public Pier improvements is estimated at approximately \$1.45 million. The Funding Sources for this Project are as follows:

Port Capital Funds	\$300,000
California Coastal Conservancy	400,000
ABAG Bay Trail	200,000
California Resources Agency - CIAP	105,000
DPW Departmental Funds	50,000
CA Transportation Comm EEM Grant	200,000
Wildlife Conservation Board	200,000
Total:	\$1,455,000
Total estimated Project cost:	\$1,450,000

Current Status:

We anticipate advertising for bids in mid-November with construction to begin in January of next year. As the construction documents are nearly complete, Port staff requests authorization from the Commission to advertise for construction bids for this project.

Prepared by: Mojgan Yousefkhan, Project Manager,
for Nita Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-46

- WHEREAS, the Ferry Terminal Public Pier project will provide public access improvements on the existing Ferry Terminal breakwater, support recreational fishing and other wildlife-associated recreation uses, and will enhance the Embarcadero roadway and promenade; and
- WHEREAS, the Project is an important part of the Port's Waterfront Land Use Plan; and
- WHEREAS, all relevant agencies, including the Bay Conservation and Development Commission, the Regional Water Quality Control Board, and the Army Corps of Engineers, have issued permits for approval of the Project; and
- WHEREAS, the estimated cost of the work is \$1.45 million, which will be funded with Port Capital Funds and several grants; and
- WHEREAS, On March 26, 2001 (by Resolution No. 01-21), the Port Commission authorized the Executive Director, to accept and expend \$400,000 in grant funds with from the Association of Bay Area Governments for the Public Pier project; and
- WHEREAS, On November 13, 2001 (by Resolution No. 01-85), the Port Commission authorized the Executive Director, to accept and expend \$200,000 in Environmental Enhancement and Mitigation Program grant funds with the State of California for the Public Pier project; and
- WHEREAS, On December 11, 2001 (by Resolution No. 01-94), the Port Commission authorized the Executive Director, to accept and expend \$400,000 in State Coastal Conservancy grant funds with the State of California for the Public Pier project; and
- WHEREAS, On July 9, 2002 (by Resolution No. 02-21), the Port Commission authorized the Executive Director, to accept and expend \$200,000 in grant funds from the Wildlife Conservation Board for the Public Pier project; and
- WHEREAS, Port staff has secured the necessary funding for this project and has nearly completed the final construction documents necessary to bid the construction project; now therefore be it
- RESOLVED, that the San Francisco Port Commission hereby authorizes staff to advertise for competitive bids to construct Downtown Ferry Terminal Public Pier.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 8, 2002.

Secretary



MEMORANDUM

October 3, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Approval of Lease Assignment from Alioto Fish Company, Ltd. to Boudin Properties, Inc.

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT OF LEASE NO. L-7495 BY ALIOTO FISH COMPANY, LTD. TO BOUDIN PROPERTIES, INC.

Background:

In 1970, the Port Commission approved entering into a lease (Lease No. L-7495, hereinafter "Lease") with Exposition Fish Grotto, Inc. for approximately 14,122 square feet of land and the improvements thereon. The term of the Lease was for sixty-six (66) years commencing May 1, 1970 and terminating April 30, 2036.

The Lease provided that the "Use of Premise" was "To conduct a restaurant of a kind and class presently on the premises, and other uses reasonably related and auxiliary thereto, and such other uses Tenant has heretofore made of or conducted on the leased premises. Changes in kind and class of restaurant or changes in other uses shall be made only on express written consent of Port." (§5)

Prior to the execution of the Lease, Exposition Fish Grotto, Inc. had operated a first-class Italian seafood restaurant at the premise location known as Exposition Fish Grotto.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

In September 1970, the Port Commission approved an amendment to the Lease, the effect of which was to add to the Lease the mineral reservations required by the terms of the Burton Act. Shortly after the Port Commission approved the Lease, the Port entered into License No. 7413, a License to Use Space Agreement ("License"), with Exposition Fish Grotto, Inc. affecting a parking lot situated immediately east and contiguous and adjacent to the leased premises.

In October 1972, the Port Commission approved the assignment of the Lease and License by Exposition Fish Grotto, Inc. to Alioto Fish Company, Ltd. ("Alioto").

In November 1973, Alioto subleased a portion of the premises to Carnation Company. Carnation Company operated a Carnation Family Restaurant in 5,200 square feet of the Premises. The Port Commission on December 12, 1973 approved that sublease.

On February 8, 1974, Alioto and Carnation Company entered into a First Amendment to Sublease providing for certain technical revenue reporting utility and insurance revisions to the sublease.

On February 27, 1974 the Port Commission approved an amendment to Lease No. L-7495 that expanded the leased premises to 19,490 square feet. (See Exhibit 1, attached)

On November 27, 1974 the Port Commission approved a sublease to Fisherman's Wharf Sourdough French Bread Bakery, d.b.a. Boudin Bakery, to operate a French bread bakery in "... an area of Exposition Grotto not occupied by Carnation Company."

In May 1975, the tenant entered into a sublease with Fisherman's Wharf Sourdough French Bread Bakeries, Inc. for 4,500 square feet of the premises.

On May 10, 1977, the Port entered into a License to Use Space – Non- Exclusive (License No. 9545) for 2,241 square feet of parking lot adjacent to and east of the L-7495 premises.

In March 1986, Alioto terminated the Carnation Company sublease and began operating the restaurant as the Expo Family Restaurant.

In April 1995, the Port Commission approved an extension of the sublease to Fisherman's Wharf Sourdough French Bread Bakeries through January 31, 1996.

In September 1996, Alioto informed the Port of its intention to permit Fisherman's Wharf Sourdough French Bread Bakeries, Inc., d.b.a. Boudin Bakeries, to continue to occupy a portion of the leased premises by virtue of a month-to-month holdover tenancy on the same terms and conditions of the expired amended sublease.

In May 1998, the Port entered into Sidewalk Encroachment Permit and Revocable License No. E-12586 with Alioto Fish Company, Ltd. allowing for the placement of tables and chairs and the

operation of a "sidewalk café" along the Jefferson Street sidewalk adjacent to and south of the building on the premises.

The Assignment:

Assignor: Alioto Fish Company, Ltd.
Assignee: Boudin Properties, Inc.

Boudin Properties, Inc. is a wholly owned subsidiary company of Andre-Boudin Bakeries, Inc.

The history of Andre Boudin Bakeries is as old as the City of San Francisco itself. The first Boudin bakery opened in 1849 on Dupont Street, known today as Grant Avenue. In 1935, Steve Giraudo, a recent immigrant from Italy, joined Boudin as a baker. By 1945, Mr. Giraudo had become the company's master baker and was made a partner in the firm.

In May 1975, Boudin opened its first retail bakery in Fisherman's Wharf as a subtenant of the Alioto Fish Company, Ltd., in the property now affected by the proposed assignment. Over the years, as the company expanded, it diversified into a multi-national food company with revenues reaching \$2.5 billion in 1993. In that year, the Giraudo family sold the company. In July 2002, Louis Giraudo, the son of Steve Giraudo, along with Sharon Duvall and GESD Investors LP, re-acquired Andre Boudin Bakeries, Inc. and returned its ownership and headquarters to San Francisco.

The Lease requires that the premises must be operated "...to secure maximum economic benefit based on the uses specified," and stresses that "It is the intent (of the Lease) that a Tenant shall not acquire the use of the property through a lease and then not use it" (Section 6). Boudin Properties, Inc. proposes to continue to operate the Boudin Bakery on the leased premises in its existing configuration and is in the process of searching for an effective operator for the Expo Restaurant.

The Lease provides that the "Use of the Premises" shall be "To conduct a restaurant of a kind and class presently on the premises and other uses reasonably related and auxiliary thereto and such other uses as Tenant has heretofore made of or conducted on the leased premises. Changes in kind or class of restaurant or changes in other uses shall be made only upon the express written consent of the Port" (Section 5).

Boudin Properties, Inc.'s long-term plans for the location have not been fully developed. The company is currently reviewing various integrated concepts, which may include, but are not limited to, a wholesale-retail bakery, café, restaurant, wine-tasting room and coffee roaster-café, elements of which would be operated under the "guise and integrity of Boudin."

Given this re-orientation, and based on past fundamentals of the company's operations, Boudin projects that it will be able to reach annual gross revenues in excess of \$10 million at this location.

Alioto Fish Company, Ltd. and Boudin Properties, Inc. have entered into an Assignment and Assumption of Lease and Lease Guarantee Agreement approved as to form by the Port's General Counsel. The Agreement is attached hereto as Exhibit 2.

Andre Boudin Bakeries, Inc. will be the guarantor under the Lease. The Port Collections Manager has reviewed the balance sheets and credit reports of Andre-Boudin Bakeries, Inc. and has determined that the company is creditworthy. As a result, Port staff recommends that Alioto Fish Company, Ltd. be released from any continuing liability under the terms of the Lease.

Rather than allow for the assignment of License No. 9545 to Use Space – Non-Exclusive, Port staff recommends that this month-to-month license be terminated and replaced with a new month-to-month lease on terms and conditions consistent with the Port Commission's approved leasing policy. Similarly, Port staff recommends terminating the Sidewalk Encroachment Permit and Revocable License No. E-12056, which permits the operation of a sidewalk café and the placement of tables and chairs on Jefferson Street, and negotiating a new Sidewalk Encroachment Permit and Revocable License with Boudin Properties, Inc. on the same terms and conditions of the terminated agreement. Both documents are attached hereto as Exhibits 3 and 4 respectively.

Conclusion:

Boudin Properties, Inc. and its parent, Andre Boudin Bakeries, Inc. have demonstrated to the Port the financial capacity and professional operational experience needed to assume all of the obligations under the terms of the Lease.

The Port would be well served by the return to Fisherman's Wharf of a company whose history is so closely linked to the City and County of San Francisco. Andre Boudin Bakeries has maintained a presence at Fisherman's Wharf as both a subtenant of Alioto Fish Company, Ltd. at 160 Jefferson Street and since 1975, and as a direct tenant of the Port since 1993. Andre Boudin Bakeries and its cafes are known throughout the nation as purveyors of superior baked goods and San Francisco's traditional sourdough French bread. The proposed assignee's background as a bakery and café operator should continue to prove beneficial to the health of the Port and the Fisherman's Wharf community.

Recommendation:

Port staff recommends that the Port Commission approve the Assignment of Lease No. L-7495 by Alioto Fish Company, Ltd. to Boudin Properties, Inc., subject to Andre Boudin Bakeries, Inc. guaranteeing the full performance by Boudin Properties, Inc., of all of the terms and conditions of the lease; and further that Alioto Fish Company, Ltd., be relieved of its continuing contingent liability under the terms of the Lease.

Prepared by: Nic Dempsey, Commercial Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-47

- WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, By lease dated May 1, 1970, the San Francisco Port Commission entered into a Port Lease No. L-7495 with Exposition Fish Grotto, Inc. for 14,122 square feet of property located on Seawall Lot 301 and more commonly known as 160 Jefferson Street, San Francisco, CA; and
- WHEREAS, In October 1972, the San Francisco Port Commission approved the assignment of Lease No. L-7495 by Exposition Fish Grotto, Inc to Alioto Fish Company, Ltd.; and
- WHEREAS, On February 27, 1974, the San Francisco Port Commission approved an Amendment to Lease which, among other things, expanded the leased premises affected by Lease No. L-7495 to include approximately 5,623 square feet of parking area east of and adjacent and contiguous to the leased premises; and
- WHEREAS, Lease No. L-7495 provides that the Tenant thereunder must obtain the consent of the San Francisco Port Commission for any assignment of the lease, which consent must not be unreasonably withheld; and
- WHEREAS, Alioto Fish Company, Ltd. has requested San Francisco Port Commission's consent to assign Lease No. L-7495 to Boudin Properties, Inc., a wholly owned subsidiary of Andre-Boudin Bakeries, Inc.; and pursuant to the consent to Assumption and Assignment Agreement attached hereto as Exhibit 2; and
- WHEREAS, Andre Boudin Bakeries, Inc. has agreed to guarantee the full performance of all of the terms and conditions of Lease No. L-7495 by its subsidiary, Boudin Properties, Inc.; and
- WHEREAS, Port staff has negotiated the terms of a consent to Assignment and Assumption of Lease Agreement with Alioto Fish Company, Ltd., as "Assignor", Boudin Properties, Inc., as Assignee and has obtained a guarantee of the Lease obligation from Andre-Boudin Bakeries, Inc. as Guarantor relative to the proposed assignment of Lease No. L-7495; and
- WHEREAS, Port staff has established that the proposed Assignee, Boudin Bakeries, Inc. and the proposed guarantor Andre-Boudin Bakeries, Inc., are creditworthy and capable of performing all of the obligations of the Tenant under the terms and conditions of Lease No. L-7495; now, therefore, be it

RESOLVED, That the San Francisco Port Commission hereby consents to the assignment of Lease No. L-7495 by Alioto Fish Company, Ltd. as Assignor to Boudin Bakeries, Inc. as Assignee subject to the guarantee of the Assignee's obligations as Tenant under the Terms of Lease No. L-7495 by Andre-Boudin Bakeries, Inc., and be it further

RESOLVED, That Alioto Fish Company, Ltd. shall be relieved of any continuing obligations under the terms of the Lease; and be it further

RESOLVED, That the San Francisco Port Commission hereby authorizes the Executive Director of the Port of San Francisco to execute documents effecting consent to said assignment on behalf of the San Francisco Port Commission in such form as is approved by the City Attorney's Office and as outlined in the Memorandum to the San Francisco Port Commission for Agenda Item No. 7A for its October 8, 2002 regular meeting.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 8, 2002.

Secretary



MEMORANDUM

October 3, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Approval of Lease Assignment from Alioto Fish Company, Ltd. to Boudin Properties, Inc.

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT OF LEASE NO. L-7495 BY ALIOTO FISH COMPANY, LTD. TO BOUDIN PROPERTIES, INC.

Background:

In 1970, the Port Commission approved entering into a lease (Lease No. L-7495, hereinafter "Lease") with Exposition Fish Grotto, Inc. for approximately 14,122 square feet of land and the improvements thereon. The term of the Lease was for sixty-six (66) years commencing May 1, 1970 and terminating April 30, 2036.

The Lease provided that the "Use of Premise" was "To conduct a restaurant of a kind and class presently on the premises, and other uses reasonably related and auxiliary thereto, and such other uses Tenant has heretofore made of or conducted on the leased premises. Changes in kind and class of restaurant or changes in other uses shall be made only on express written consent of Port." (§5)

Prior to the execution of the Lease, Exposition Fish Grotto, Inc. had operated a first-class Italian seafood restaurant at the premise location known as Exposition Fish Grotto.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

In September 1970, the Port Commission approved an amendment to the Lease, the effect of which was to add to the Lease the mineral reservations required by the terms of the Burton Act. Shortly after the Port Commission approved the Lease, the Port entered into License No. 7413, a License to Use Space Agreement ("License"), with Exposition Fish Grotto, Inc. affecting a parking lot situated immediately east and contiguous and adjacent to the leased premises.

In October 1972, the Port Commission approved the assignment of the Lease and License by Exposition Fish Grotto, Inc. to Alioto Fish Company, Ltd. ("Alioto").

In November 1973, Alioto subleased a portion of the premises to Carnation Company. Carnation Company operated a Carnation Family Restaurant in 5,200 square feet of the Premises. The Port Commission on December 12, 1973 approved that sublease.

On February 8, 1974, Alioto and Carnation Company entered into a First Amendment to Sublease providing for certain technical revenue reporting utility and insurance revisions to the sublease.

On February 27, 1974 the Port Commission approved an amendment to Lease No. L-7495 that expanded the leased premises to 19,490 square feet. (See Exhibit 1, attached)

On November 27, 1974 the Port Commission approved a sublease to Fisherman's Wharf Sourdough French Bread Bakery, d.b.a. Boudin Bakery, to operate a French bread bakery in "... an area of Exposition Grotto not occupied by Carnation Company."

In May 1975, the tenant entered into a sublease with Fisherman's Wharf Sourdough French Bread Bakeries, Inc. for 4,500 square feet of the premises.

On May 10, 1977, the Port entered into a License to Use Space - Non- Exclusive (License No. 9545) for 2,241 square feet of parking lot adjacent to and east of the L-7495 premises.

In March 1986, Alioto terminated the Carnation Company sublease and began operating the restaurant as the Expo Family Restaurant.

In April 1995, the Port Commission approved an extension of the sublease to Fisherman's Wharf Sourdough French Bread Bakeries through January 31, 1996.

In September 1996, Alioto informed the Port of its intention to permit Fisherman's Wharf Sourdough French Bread Bakeries, Inc., d.b.a. Boudin Bakeries, to continue to occupy a portion of the leased premises by virtue of a month-to-month holdover tenancy on the same terms and conditions of the expired amended sublease.

In May 1998, the Port entered into Sidewalk Encroachment Permit and Revocable License No. E-12586 with Alioto Fish Company, Ltd. allowing for the placement of tables and chairs and the

operation of a "sidewalk café" along the Jefferson Street sidewalk adjacent to and south of the building on the premises.

The Assignment:

Assignor: Alioto Fish Company, Ltd.
Assignee: Boudin Properties, Inc.

Boudin Properties, Inc. is a wholly owned subsidiary company of Andre-Boudin Bakeries, Inc.

The history of Andre Boudin Bakeries is as old as the City of San Francisco itself. The first Boudin bakery opened in 1849 on Dupont Street, known today as Grant Avenue. In 1935, Steve Giraudo, a recent immigrant from Italy, joined Boudin as a baker. By 1945, Mr. Giraudo had become the company's master baker and was made a partner in the firm.

In May 1975, Boudin opened its first retail bakery in Fisherman's Wharf as a subtenant of the Alioto Fish Company, Ltd., in the property now affected by the proposed assignment. Over the years, as the company expanded, it diversified into a multi-national food company with revenues reaching \$2.5 billion in 1993. In that year, the Giraudo family sold the company. In July 2002, Louis Giraudo, the son of Steve Giraudo, along with Sharon Duvall and GESD Investors LP, re-acquired Andre Boudin Bakeries, Inc. and returned its ownership and headquarters to San Francisco.

The Lease requires that the premises must be operated "...to secure maximum economic benefit based on the uses specified," and stresses that "It is the intent (of the Lease) that a Tenant shall not acquire the use of the property through a lease and then not use it" (Section 6). Boudin Properties, Inc. proposes to continue to operate the Boudin Bakery on the leased premises in its existing configuration and is in the process of searching for an effective operator for the Expo Restaurant.

The Lease provides that the "Use of the Premises" shall be "To conduct a restaurant of a kind and class presently on the premises and other uses reasonably related and auxiliary thereto and such other uses as Tenant has heretofore made of or conducted on the leased premises. Changes in kind or class of restaurant or changes in other uses shall be made only upon the express written consent of the Port" (Section 5).

Boudin Properties, Inc's long-term plans for the location have not been fully developed. The company is currently reviewing various integrated concepts, which may include, but are not limited to, a wholesale-retail bakery, café, restaurant, wine-tasting room and coffee roaster-café, elements of which would be operated under the "guise and integrity of Boudin."

Given this re-orientation, and based on past fundamentals of the company's operations, Boudin projects that it will be able to reach annual gross revenues in excess of \$10 million at this location.

Alioto Fish Company, Ltd. and Boudin Properties, Inc. have entered into an Assignment and Assumption of Lease and Lease Guarantee Agreement approved as to form by the Port's General Counsel. The Agreement is attached hereto as Exhibit 2.

Andre Boudin Bakeries, Inc. will be the guarantor under the Lease. The Port Collections Manager has reviewed the balance sheets and credit reports of Andre-Boudin Bakeries, Inc. and has determined that the company is creditworthy. As a result, Port staff recommends that Alioto Fish Company, Ltd. be released from any continuing liability under the terms of the Lease.

Rather than allow for the assignment of License No. 9545 to Use Space – Non-Exclusive, Port staff recommends that this month-to-month license be terminated and replaced with a new month-to-month lease on terms and conditions consistent with the Port Commission's approved leasing policy. Similarly, Port staff recommends terminating the Sidewalk Encroachment Permit and Revocable License No. E-12056, which permits the operation of a sidewalk café and the placement of tables and chairs on Jefferson Street, and negotiating a new Sidewalk Encroachment Permit and Revocable License with Boudin Properties, Inc. on the same terms and conditions of the terminated agreement. Both documents are attached hereto as Exhibits 3 and 4 respectively.

Conclusion:

Boudin Properties, Inc. and its parent, Andre Boudin Bakeries, Inc. have demonstrated to the Port the financial capacity and professional operational experience needed to assume all of the obligations under the terms of the Lease.

The Port would be well served by the return to Fisherman's Wharf of a company whose history is so closely linked to the City and County of San Francisco. Andre Boudin Bakeries has maintained a presence at Fisherman's Wharf as both a subtenant of Alioto Fish Company, Ltd. at 160 Jefferson Street and since 1975, and as a direct tenant of the Port since 1993. Andre Boudin Bakeries and its cafes are known throughout the nation as purveyors of superior baked goods and San Francisco's traditional sourdough French bread. The proposed assignee's background as a bakery and café operator should continue to prove beneficial to the health of the Port and the Fisherman's Wharf community.

Recommendation:

Port staff recommends that the Port Commission approve the Assignment of Lease No. L-7495 by Alioto Fish Company, Ltd. to Boudin Properties, Inc., subject to Andre Boudin Bakeries, Inc. guaranteeing the full performance by Boudin Properties, Inc., of all of the terms and conditions of the lease; and further that Alioto Fish Company, Ltd., be relieved of its continuing contingent liability under the terms of the Lease.

Prepared by: Nic Dempsey, Commercial Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-47

- WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, By lease dated May 1, 1970, the San Francisco Port Commission entered into a Port Lease No. L-7495 with Exposition Fish Grotto, Inc. for 14,122 square feet of property located on Seawall Lot 301 and more commonly known as 160 Jefferson Street, San Francisco, CA; and
- WHEREAS, In October 1972, the San Francisco Port Commission approved the assignment of Lease No. L-7495 by Exposition Fish Grotto, Inc to Alioto Fish Company, Ltd.; and
- WHEREAS, On February 27, 1974, the San Francisco Port Commission approved an Amendment to Lease which, among other things, expanded the leased premises affected by Lease No. L-7495 to include approximately 5,623 square feet of parking area east of and adjacent and contiguous to the leased premises; and
- WHEREAS, Lease No. L-7495 provides that the Tenant thereunder must obtain the consent of the San Francisco Port Commission for any assignment of the lease, which consent must not be unreasonably withheld; and
- WHEREAS, Alioto Fish Company, Ltd. has requested San Francisco Port Commission's consent to assign Lease No. L-7495 to Boudin Properties, Inc., a wholly owned subsidiary of Andre-Boudin Bakeries, Inc.; and pursuant to the consent to Assumption and Assignment Agreement attached hereto as Exhibit 2; and
- WHEREAS, Andre Boudin Bakeries, Inc. has agreed to guarantee the full performance of all of the terms and conditions of Lease No. L-7495 by its subsidiary, Boudin Properties, Inc.; and
- WHEREAS, Port staff has negotiated the terms of a consent to Assignment and Assumption of Lease Agreement with Alioto Fish Company, Ltd., as "Assignor", Boudin Properties, Inc., as Assignee and has obtained a guarantee of the Lease obligation from Andre-Boudin Bakeries, Inc. as Guarantor relative to the proposed assignment of Lease No. L-7495; and
- WHEREAS, Port staff has established that the proposed Assignee, Boudin Bakeries, Inc. and the proposed guarantor Andre-Boudin Bakeries, Inc., are creditworthy and capable of performing all of the obligations of the Tenant under the terms and conditions of Lease No. L-7495; now, therefore, be it

RESOLVED, That the San Francisco Port Commission hereby consents to the assignment of Lease No. L-7495 by Alioto Fish Company, Ltd. as Assignor to Boudin Bakeries, Inc. as Assignee subject to the guarantee of the Assignee's obligations as Tenant under the Terms of Lease No. L-7495 by Andre-Boudin Bakeries, Inc., and be it further

RESOLVED, That Alioto Fish Company, Ltd. shall be relieved of any continuing obligations under the terms of the Lease; and be it further

RESOLVED, That the San Francisco Port Commission hereby authorizes the Executive Director of the Port of San Francisco to execute documents effecting consent to said assignment on behalf of the San Francisco Port Commission in such form as is approved by the City Attorney's Office and as outlined in the Memorandum to the San Francisco Port Commission for Agenda Item No. 7A for its October 8, 2002 regular meeting.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 8, 2002.

Secretary

ASSUMPTION AND ASSIGNMENT AGREEMENT

COPY

THIS ASSUMPTION AND ASSIGNMENT AGREEMENT ("Assignment") is dated as of October 9, 2002 or such other date as the parties shall mutually agree (the "Effective Date"), between and among Alioto Fish Company, Inc. (the "Assignor"), and Boudin Properties, Inc., a California corporation (the "Assignee"), and the City and County of San Francisco, operating by and through the San Francisco Port Commission (the "Port") with reference to the following facts:

RECITALS

- A. Whereas, Assignor's predecessor-in-interest, Exposition Fish Grotto, Inc. ("Tenant"), and the City and County of San Francisco, a municipal corporation, acting by and through the San Francisco Port Commission ("Port"), as landlord, entered into a written lease agreement dated May 1, 1970, in which Port leased to Tenant, and Tenant leased from Port, certain real property consisting of approximately 14,122 square feet of land and the improvements thereon located on Seawall Lot 301 and more commonly known as 160 Jefferson Street, San Francisco, California (the "Premises"); and
- B. Whereas, on September 25, 1970, Tenant and Port entered into a written amendment to lease agreement ("First Amendment") modifying the terms of Lease No. L-7495; and
- C. Whereas, Lease No. L-7495, as amended by the First Amendment was assigned by Tenant to the herein Assignor; and
- D. Whereas, on February 27, 1974, Port and Assignor entered into a written amendment to lease agreement ("Second Amendment") further modifying the terms of Lease No. L-7495 and expanding the Premises to 19,490 square feet of land and the improvements thereon at Seawall Lot 301, more commonly known as 160 Jefferson Street, San Francisco, California, said Lease No. L-7495 as amended by the First Amendment and as further amended by the Second Amendment being hereinafter referred to as the "Lease"; and
- E. Whereas, Assignor now desires to assign ("Assignment" all of Assignor's right, title and interest to and in the Lease) to Assignor; and
- F. Whereas, Assignor is willing to accept said Assignment; and
- G. Whereas, the terms of the lease require that Assignor may not assign the Lease for any interest therein without the written consent of Port having first been obtained, which consent shall not be unreasonably withheld,

NOW, **THEREFORE**, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Port, Assignor and Assignee do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Effective Date.** This Assignment shall become effective on the first day following the date on which the Port executed the Assignment as shown below (the "Effective Date").

3. **Assignment and Assumption.** As of the Effective Date, Assignor assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Lease and the Premises, and Assignee accepts such Assignment and assumes and agrees to perform, from the date the Assignment becomes effective, as a direct obligation to Port, all the provisions of the Lease.

4. **Indemnity.** Assignee hereby agrees to indemnify and hold Assignor harmless from all liability, claim, demand, cause of action, damage, loss, cost or expense (including, without limitation, attorneys' fees and cost of suit) arising from or related to the Lease or the Premises after the Effective Date of this Assignment. Assignor hereby agrees to indemnify and hold Assignee harmless from all liability, claim, demand, cause of action, damage, loss, cost of expense (including, without limitation, attorneys' fees and costs of suit) arising from or related to the Lease or the Premises prior to the Effective Date of this Assignment. Without limiting the generality of the foregoing, should Assignor pay rent to Port or fulfill any of Assignee's other Lease obligations in order to prevent Assignee from being in default under the Lease or to cure any such default of Assignee, Assignee shall reimburse Assignor, within ten (10) days of Assignor's written demand, for all such amounts, together with interest at the maximum rate an individual may at law charge.

5. **Notices of Default.** Assignee agrees to promptly provide Assignor with copies of any notices of default delivered to Assignee by Port. For the express benefit of Port, Assignor and Assignee agree that Port shall have no obligation to independently or directly give or deliver any notices of default to Assignor. Assignee's indemnity obligations under Paragraph 4 of this Assignment shall extend to any failure of or delay by Assignee in fulfilling Assignee's obligations under this Paragraph 5.

6. **Security Deposit.** The parties acknowledge that Port now holds the sum of Eleven Thousand Two Hundred Forty-One Dollars and Eleven Cents (\$11,241.11) as a security deposit to be applied subject to the provisions of the Lease. Assignor releases the Port against all claims to such sum, and hereby assigns right, title and interest in the security deposit to the Assignee as part of this Assignment subject to the provisions of the Lease. Assignee acknowledges and agrees that Port shall retain the security deposit.

7. Assignor's Liability.

(a) As a condition to Port's consent to this Assignment and for the express benefit of Port, Assignor hereby agrees: (1) that Assignor shall not be released from any obligations as Tenant under the Lease, regardless of any rights or remedies that Assignor may have against Assignee; (2) that Assignor's liability under the Lease shall be primary and not merely that of a surety, and that any failure of or delay by Port, in the event of a default, to give notice of such default to Assignee or to proceed against Assignee or any other party liable to Port or to seek to enforce or resort to any deposits, liens, security interest granted to Port as security, or other remedy available to Port shall not affect in any way Port's right to proceed against Assignor; (3) that Assignor is directly liable to Port, that Assignor's obligations are independent of the obligations of Assignee, and that a separate action or actions may be brought and prosecuted by Port against Assignor, whether or not action is brought against Assignee or whether or not Assignee is joined in any such action or actions and (4) that any release(s) which may now or hereafter be given by Port to Assignee shall not release Assignor from the Lease.

(b) As a condition of Port's consent to this Assignment and for the express benefit of Port, Assignor hereby authorizes Port, without notice or demand and without affecting Assignor's liability hereunder or under the Lease, from time to time to: (1) compromise, modify or otherwise change the terms of the Lease or any of the tenant's obligations under the Lease, including, without limitation, increasing or decreasing the rent and changing the length of the term of the Lease (except that, other than by exercise of any option(s) contained in the Lease to extend the term and expressly assigned to Assignee pursuant to this Assignment, Assignor shall not be liable for obligations incurred by Assignee during an extended term of the Lease unless Assignor's prior written consent has first been obtained); (2) take and hold security for the Lease, and exchange, enforce, waive, and release any such security; (3) apply such security and direct the order and manner of sale thereof as Port in its sole discretion may determine; (4) release or substitute any one or more tenants; (5) assign, without notice, the Lease in whole or in part and/or Port's rights thereunder to anyone at any time; and (6) proceed against Assignor, Assignee or any other party liable to Port for any default of the Lease whether or not notice of such default has been given to or received by Assignor. For the express benefit of Port, Assignor agrees that Port may do any or all of the foregoing in such manner, upon such terms, and at such times as Port, in its sole discretion deems advisable, without in any way or respect impairing, affecting, reducing or releasing Assignor from its undertakings hereunder and Assignor hereby consents to each and all of the foregoing acts, events and/or occurrences.

8. Waiver of Claims.

(a) As a condition of Port's consent to this Assignment and for the express benefit of Port, Assignor and Assignee hereby waive any and all liability, claim, demand, cause of action, damage, loss, cost or expense (including, without limitation, attorneys' fees and costs of suit) against Port arising from or in connection with the terms and conditions of this Assignment or the provision by Port of this Assignment. Assignor and Assignee acknowledge

and agree that **this** Assignment was provided by Port as a courtesy only and that they have had the opportunity to negotiate and agree upon terms other than or different from the terms of this Assignment.

9. **Guaranty.** As a condition of Port's consent to this Assignment of Lease and for the express benefit of Port, Assignee shall deliver to Port a duly executed and authorized Guaranty of Lease in the form attached hereto as Exhibit 1.

10. **Attorneys Fees.** In the event legal action or other proceedings are instituted to enforce any of their provisions of this Assignment, or any party's rights hereunder, or as a result of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Assignment, the prevailing party shall be entitled to all costs and expenses of such litigation or other proceeding, including reasonable attorneys' fees, interest, costs of suit, costs of investigation, and costs, expenses and fees incurred in appellate proceedings, in enforcing any judgment, or in any action or participation in, or in connection with, any case or proceeding under Chapters 7, 11 or 13 of the United States Bankruptcy Code or any successor statutes. "Prevailing party" shall include, without limitation, a party who dismisses an action in exchange for payment of sums allegedly due, performance of covenants allegedly breached, or consideration or other performance substantially equal to the relief sought in the action. The provisions of this paragraph providing for post-judgment attorneys fees shall survive any judgment and shall not be deemed merged into any judgment.

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In Witness Whereof, the parties hereto have executed this Agreement as of the date last set forth, herebelow

ASSIGNOR:

**Alioto Fish Company, Inc.
A California corporation**

ASSIGNEE:

**Boudin Properties, Inc.
a California corporation**

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

Dated: _____

CONSENT TO ASSIGNMENT IS HEREBY GIVEN:

**CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
Operating and through the SAN FRANCISCO PORT COMMISSION**

Kenneth Winters
Director, Real Estate Division

Dated: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

Deputy City Attorney

Assumption and Assignment Agreement prepared by: Nicolas J. Dempsey, Commercial Property
Manager _____ (initial)

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EXHIBIT 1
LEASE GUARANTY

LEASE GUARANTY

THIS LEASE GUARANTY ("Guaranty") is made as of _____, 2002 by Andre Boudin Bakeries, Inc., a _____ corporation (the "Guarantor") in favor of the City and County of San Francisco, by and through the San Francisco Port Commission ("Port").

R E C I T A L S:

A. By Lease No. L-7495 (the "Lease"), dated May 1, 1970, Port, as landlord, and Exposition Fish Grotto, Inc., as tenant, entered into a 66-year lease for approximately 14,122 square feet of property located in the City and County of San Francisco, on Seawall Lot 301 and more commonly known as 160 Jefferson Street". In 1972, the Port approved the assignment of the Lease to Alioto Fish Company, Ltd.

B. Pursuant to that certain Lease Assignment and Assumption Agreement, dated as of _____, 2002, Alioto Fish Company assigned the Lease to Boudin Properties, Inc. ("Tenant").

C. Port and Tenant have entered into a month-to-month license No. _____, and Sidewalk Encroachment Permit and Revocable License No. _____ relating to the use of parking lot and sidewalk areas (collectively, the "Licenses"). The Lease and the Licenses are collectively referred to herein as the "Documents."

D. By Resolution No. _____, at its October 8, 2002 meeting, the Port consented to the assignment of Lease to Tenant. As a condition to its consent, Port requires that the Guarantor execute this Guaranty guaranteeing the performance by Tenant of its obligations under the Documents (collectively, the "Obligations").

NOW, THEREFORE, in order to induce Port's consent to the Assignment, and in consideration thereof, the Guarantor guarantees and agrees as follows:

1. Guarantee of Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to the Port that Tenant will perform all of the Obligations in the time and manner provided and otherwise in accordance with all the terms and conditions of the Documents. Without limiting the foregoing, Guarantor expressly acknowledges that this Guaranty obligates Guarantor to guarantee payment of all sums due under the Documents, and the performance of all maintenance and repair obligations required thereunder.

2. Remedies. If (i) Guarantor fails to perform as herein provided (a "Default"), and (ii) either (A) such Default has not been cured within fifteen (15) days after written notice from Port to Guarantor, or (B) if the Default is not the payment of money or is of such a nature as cannot be cured within such fifteen (15) days, Guarantor fails to commence to cure such Default within fifteen (15) days after written notice from Port to Guarantor or thereafter fails to diligently proceed to cure such Default, then, in such event, Port has the following remedies:

(a) at its option and without any obligation so to do, proceed to perform on behalf of the Guarantor any and all of the Obligations, and the Guarantor shall pay to Port upon demand all sums expended by Port in such performance on behalf of the Guarantor; and

(b) from time to time and without requiring performance on the part of Tenant and without being required to exhaust any or all security held by the Port to require performance by the Guarantor of any obligation on the part of the Guarantor to be performed pursuant to the terms hereof by action at law or in equity or both and further to collect in any such action compensation for all loss, damage and injury and expense sustained or incurred by the Port as a consequence of such breach, as well as to collect any reasonable expenses incurred in such action.

3. Interest and Attorneys' Fees. Any sum required to be paid by the Guarantor to the Port pursuant to the terms hereof shall bear interest at a rate equal to the lesser of (i) four percent (4%) over the Prime Rate, or (ii) the maximum rate permitted by law at the time said sum is due, from the date said sums shall be due until paid. If either party commences an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, together with interest thereon for the time and at the rate provided in this Paragraph 3.

4. Release of Guarantor. The Obligations shall be deemed to be fully performed, and the undersigned shall be released from any further liability hereunder, upon a subsequent assignment of the Documents, duly consented to by Port in accordance with the terms of the Documents, except as to any Obligations arising prior to the effective date of such assignment.

5. Obligations Independent. The undersigned's obligations hereunder are independent of the obligations of Tenant, or any assignee of the Documents, and a separate action or actions may be brought and prosecuted against the undersigned whether or not action is brought against Tenant or any such assignee or whether or not Tenant or any such assignee be joined in any such action or actions.

6. Port Rights. The undersigned authorizes the Port, without notice or demand and without affecting its liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the Documents, or any covenant, term or condition of the Documents, in any respect to impair or suspend the Port's remedies or rights against Tenant in respect to the Documents, and to consent to any assignment, subletting or reassignment of the Documents; (b) take and hold security for any payment provided for in the Documents or for the performance of any covenant, term or condition of the Documents, or exchange, waive or release any such security; (c) apply such security and direct the order or manner of sale thereof as the Port in its discretion may determine. The Port may without notice assign this Guaranty, the Documents, or the rents and other sums payable thereunder.

7. Preferential Payments. The undersigned further agrees that to the extent the Tenant or the undersigned makes any payment to the Port in connection with the Obligations, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or

preferential, set aside or required to be repaid by the Port or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by the Port, the Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

8. Waiver. The undersigned waives any right to require the Port to (a) proceed against Tenant or any other person or entity; (b) proceed against or exhaust any security held from Tenant or the undersigned; (c) pursue any other remedy in the Port's power which the undersigned cannot itself pursue, and which would lighten its burden. The undersigned waives any defense arising by reason of any disability or other defense of Tenant, or any assignee of the Documents, or by reason of the cessation from any cause whatsoever of the liability of Tenant, or any assignee of the Documents. The undersigned waives all demands upon and notices to Tenant, or any assignee of the Documents, and to the undersigned, including demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty.

9. General Terms and Conditions.

(a) No right or power of the Port shall be deemed to have been waived by any act or conduct on the part of the Port, or by any neglect to exercise such right or power, or by any delay in so doing; and every right and power of the Port shall continue in full force and effect until such right or power is specifically waived by an instrument in writing executed by the Port.

(b) This Guaranty shall bind the undersigned, its successors and assigns, and shall inure to the benefit of the Port and its successors and assigns.

(c) This Guaranty and each and every term and provision thereof shall be construed in accordance with the laws of the State of California.

(d) In the event any dispute arises regarding the enforcement or construction of the terms or provisions of this Guaranty, the prevailing party in such dispute shall be entitled to recover, in addition to any damages suffered, reasonable attorneys' fees incurred as a result thereof.

(e) Any notice to be given the Port hereunder shall be given at the address and in the manner set forth in the Documents. Any notice to be given the undersigned shall be given at the address set forth below the undersigned's signature and in the manner set forth in the Documents.

(f) The undersigned shall not assign its rights under this Guaranty.

(g) The undersigned represents, warrants and covenants that it has full power and authority to execute, deliver and perform its obligations under this Guaranty and that execution, delivery and performance has been duly authorized by all requisite action on its part.

(h) The undersigned knowingly accepts the full range of risk encompassed by the scope of this Guaranty, including without limitation, the possibility that Tenant will incur obligations for which the undersigned will be liable under this Guaranty (to the extent that same are Obligations) after Tenant's financial condition or ability to pay its lawful debts when they fall due has deteriorated.

(i) The undersigned has received a copy of the Documents, as executed or in the form to be executed, and is satisfied with all of the terms and conditions thereof (to the extent that same are applicable to the Obligations). In executing and delivering this Guaranty, Guarantor has relied on its own review of the Documents and not on any representation or statement of Port or any other person.

(j) The undersigned represents and warrants that it has received adequate and sufficient consideration for the Obligations incurred under this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the day and year first above written.

GUARANTOR:

ANDRE BOUDIN BAKERIES, INC.
A California Corporation

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

COPY

CITY AND COUNTY OF SAN FRANCISCO

WILLIE L. BROWN, JR., MAYOR

LEASE NO. 13354

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

Boudin Properties, Inc.
a California corporation

DOUGLAS F. WONG
Executive Director

SAN FRANCISCO PORT COMMISSION

Michael Hardeman, President
Kimberly Brandon, Vice President
Denise McCarthy, Commissioner
Brian McWilliams, Commissioner
Pius Lee, Commissioner

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EXHIBIT

Exhibit A The Premises

LEASE

This month-to-month Lease ("Lease"), dated for reference purposes only as of October 9, 2002, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), as landlord, and Boudin Properties, Inc., a California corporation, as tenant ("Tenant").

Port and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following terms are a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

1.1 Premises (Section 3):

Approximately 2,241 square feet of Paved Land located at Seawall Lot 301, in the City and County of San Francisco, State of California, as shown on Exhibit A attached hereto and made a part hereof, together with any and all Improvements and Alterations thereto.

1.2 Term (Section 4):

The Term of this Lease shall be from month to month and shall commence on October 9, 2002 ("Commencement Date"). Either party may terminate this Lease by giving thirty (30) days' prior written notice to the other party.

Tenant acknowledges and agrees that Port has expressly represented the month-to-month nature of this tenancy, and, in entering this Lease, Tenant is relying on no representation by Port, either explicit or implicit, that a term longer than thirty (30) days is expected or promised.

1.3 Base Rent (Section 5.1):

\$276.85 per calendar month.

1.4 Rent Commencement Date:

The first day of the calendar month next succeeding the approval by Port of the assignment of Port Lease No. L-7495 to Tenant.

1.5 Base Index (Section 5.2): September/2002
Month/Year

1.6 Percentage Rent (Section 5.3):
Applicable XX Not Applicable _____

All sales and gross revenues derived from Tenant's use of the Premises shall be included in the Gross Receipts pursuant to Tenant's lease with Port for the adjacent and contiguous premises under Port Lease No. L-7495 and Tenant shall pay percentage rent to Port on the Gross Receipts (as defined in Port Lease No. L-7495) generated on the Premises as provided in Section 2(b) of Port Lease No. L-7495.

If Applicable, Percentage of Gross Receipts Due For:

Type of Sale:	Percentage:	
_____	_____	%
_____	_____	%
_____	_____	%

1.7 Security Deposit (Section 7):
Equal to two (2) months' Base Rent
Initial Deposit: \$553.70

1.8 Permitted Use (Section 8.1): As a parking lot to be operated by Tenant as a portion of the parking lot operated by Tenant on property adjacent serving Tenant's restaurant operations under Port Lease No. L-7495 and contiguous to the Premises and leased to Tenant pursuant to Port Lease No. L-7495, and for no other use.

1.9 Maintenance and Repairs (Section 11.1):

Tenant shall at all times during the Term of this Lease, and at its sole cost and expense, maintain and repair in good and working order, condition and repair the Premises and all Improvements and Alterations thereon.

1.10 Utilities and Services (Section 12): Tenant shall pay for water and sanitary sewer services. Tenant shall be responsible for all other utilities and services including but not limited to electrical (if separately metered or submetered), gas, garbage/trash collection, janitorial and extermination services.

1.11 Mineral Reservation (Section 26):

Zone 3, beginning at a point where X equals 1,448,000 and Y equals 482,700 extending 1,000 feet south, thence 1,000 feet east, thence 1,000 feet north, and thence 1,000 feet west, ending at said point of beginning.

1.12 Notices (Section 28):

Address for Port: Commercial Property Manager
Port of San Francisco
Pier 1
San Francisco, CA 94111
Fax No: (415) 274-0578
Telephone No: (415) 274-0400

Address for Tenant: Boudin Properties, Inc.
132 Hawthorne Street
San Francisco, CA 94107
Fax No: 415/913-1818
Telephone No: 415/913-1849

Name/Address of Agent for Service of Process, if Tenant is a Corporation:

1.13 Addendum Yes X

2. DEFINITIONS

For purposes of this Lease, the following initially capitalized terms shall have the meanings given to them in this Section:

2.1 "Additional Rent" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

2.2 "Agents" means, when used with reference to either party hereto, the officers, directors, employees, agents and contractors of such party, and their respective heirs, legal representatives, successors and assigns.

2.3 "Alterations" means any alterations, installations or additions to the Premises or to any Improvements.

2.4 "Anniversary Date" means the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month thereafter.

2.5 "Base Rent" means the monthly Base Rent specified in Section 1.3 hereof and described in Section 5.1 hereof.

2.6 "Base Index" means the Cost of Living Index for the calendar month set forth in Section 1.5 hereof.

2.7 "Basic Lease Information" means the information with respect to this Lease summarized in Section 1 hereof.

2.8 "City" means the City and County of San Francisco, a municipal corporation.

2.9 "Commencement Date" means the date on which the Term of this Lease commences as specified in Section 1.2 hereof.

2.10 "Commission" means the San Francisco Port Commission.

2.11 "Cost of Living Index" means the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (All Items: 1982-84=100), San Francisco-Oakland-San Jose, California. If the aforesaid Cost of Living Index ceases to be published, any similar index published by any other branch or department of the U.S. Government shall be used as the index herein, and if none is published, another index generally recognized as authoritative shall be substituted therefor by Port. The base period used by any new index shall be reconciled to the 1982-84=100 Base Index. If the Cost of Living Index is not published for the particular calendar month in question, the immediately preceding last calendar month for which the index is published shall be used.

2.12 "Current Index" means the Cost of Living Index for the calendar month immediately preceding the Anniversary Date upon which the Base Rent is adjusted.

2.13 "Environmental Laws" means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, bay water and groundwater conditions.

2.14 "Facility" means the pier, building or other structure in or on which the Premises are located.

2.15 "Handle" or "Handling" means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

2.16 "Hazardous Material" means any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property, including, but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the United States Environmental Protection Agency, the City and County of San Francisco, the United States Department of Labor, the United States Department of Transportation, the California Department of Environmental

Protection or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

2.17 "Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

2.18 "INC" means Intrabuilding Network Cable and is defined as the telephone wiring which begins at the terminal block nearest the point where the telephone company wiring enters the Facility and ends at the terminal nearest the Premises.

2.19 "Invitees" when used with respect to Tenant means the clients, customers, invitees, guests, members, licensees, assignees and subtenants of Tenant.

2.20 "Late Charge" means a fee equivalent to one and one-half percent (1-1/2%) of all Rent, or any portion thereof, which is due and unpaid for more than fifteen (15) days.

2.21 "Laws" means all laws, statutes, ordinances, resolutions, regulations, judicial decisions, proclamations, orders or decrees of any municipal, county, state or federal government or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Premises or any portion thereof.

2.22 "Official Records" means the official records of the City and County of San Francisco.

2.23 "Percentage Rent" means a sum equal to a percentage of Tenant's Gross Receipts made from or upon the Premises during each calendar month of the Term in the percentage amounts and for the items set forth in Section 1.6, if applicable.

2.24 "Port" means the San Francisco Port Commission.

2.25 "Premises" means the real property described in Section 1.1 hereof.

2.26 "Regulatory Approval" means any authorization, approval or a permit required by any governmental agency having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission ("BCDC").

2.27 "Rent" means the Base Rent, as adjusted pursuant to the provisions of Section 5.2 hereof, together with Percentage Rent, if applicable, and any and all Additional Rent.

2.28 "Tenant" means the party identified as Tenant at the beginning of this Lease.

3. PREMISES

Port hereby leases to Tenant, and Tenant hereby hires from Port, the Premises described in Section 1.1 hereof on the terms and conditions of this Lease.

4. TERM OF LEASE

The Premises are leased by Tenant from Port on a month-to-month basis as specified in Section 1.2 hereof.

5. RENT

Tenant shall pay to Port, in the manner herein described, the following Rent:

5.1 Base Rent

Tenant shall pay to Port Base Rent, as set forth in Section 1.3 hereof, subject to adjustment in accordance with Section 5.2. Except as otherwise provided in Section 1.3, Tenant shall make the first payment of Base Rent on or before the Commencement Date and thereafter shall pay the Base Rent, in advance, on or before the first day of each calendar month. If the Commencement Date is other than the first day of the month, the Base Rent for that month shall be apportioned as the number of days of occupancy bears to that month.

5.2 Base Rent Adjustment

Port shall have the right to adjust the Base Rent to the current market rate, as reasonably determined by Port, at any time upon thirty (30) days' prior written notice to Tenant. If, however, the Base Rent has not been adjusted on or before the first Anniversary Date and on each Anniversary Date thereafter, and this Lease is in effect on the first Anniversary Date and any

Anniversary Date thereafter, the Base Rent shall be adjusted for the succeeding year in direct proportion to the percentage increase in the Current Index over the Base Index. In no case shall the Base Rent, as adjusted, be less than the Base Rent in effect immediately prior to the Anniversary Date. If the Current Index has increased over the Base Index, the adjusted Base Rent shall be determined by multiplying the Base Rent set forth in Section 1.3 by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{Current Index}}{\text{Base Index}} \times \text{Base Rent} = \text{Adjusted Base Rent}$$

5.3 Percentage Rent

If applicable, as set forth in Section 1.6 hereof, Tenant agrees to pay Percentage Rent to Port on the terms and conditions set forth in the Addendum attached hereto.

5.4 Late Charges

Tenant acknowledges that late payment by Tenant to Port of Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, a Late Charge will be paid by Tenant for each month that such Rent, or any portion thereof, remains due and unpaid, plus reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent when due under this Lease. Late Charges shall be computed from the date on which such Rent first became due. The parties agree that such Late Charges represent a fair and reasonable estimate of the cost which Port will incur by reason of any late payment by Tenant.

5.5 Additional Rent

Tenant shall pay or cause to be paid, and discharge or cause to be discharged, when the same shall become due, any and all amounts of Additional Rent, as defined in Section 2.1. If Tenant fails to pay or discharge any amount, liability or obligation of Additional Rent, Port shall have all rights, powers and remedies provided herein or by Law in the case of non-payment of the Base Rent.

5.6 Manner of Payment

All payments due from Tenant to Port under this Lease shall be made to Port without any abatement, deduction, set-off, prior notice or demand, except as otherwise expressly provided in this Lease, in lawful money of the United States of America at Port's address set forth in Section 1.12 or to such other person or at such other place as Port may from time to time designate by written notice to Tenant.

6. TAXES AND ASSESSMENTS

6.1 Payment of Taxes

During the Term of this Lease, Tenant agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's personal property, the leasehold or subleasehold estate or Tenant's use of the Premises, whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall indemnify and hold Port, City, and their Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

6.2 Possessory Interest Tax

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(c) San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the City to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

7. SECURITY DEPOSIT

Tenant shall pay to Port on or before the Commencement Date, in addition to the advance payment of the first month's Base Rent, a security deposit, in cash, in the sum specified as the Initial Deposit in Section 1.7, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the security deposit to maintain the same ratio of security deposit to Base Rent as existed at the Commencement Date. Any increase in the security deposit shall be delivered to Port on the same date that such increase in the Base Rent is first due. Tenant agrees that Port may (but shall not be required to) apply the security deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any damage to the Premises caused by Tenant; or (c) cure any default by Tenant. If Port uses any portion of the security deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount. Port's obligation with respect to the security deposit is solely that of debtor and not trustee. Tenant shall not be entitled to any interest on such deposit. If Tenant is not in default at the termination of this Lease, Port shall return the unused balance of the security deposit to Tenant after Tenant vacates the Premises. The amount of the security deposit shall in no way limit Tenant's obligations under this Lease, and nothing contained in this Section 7 shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by Law or equity.

8. USE OF THE PREMISES

8.1 Permitted Use

The Premises shall be used and occupied only for the Permitted Use specified in Section 1.8 hereof and for no other purpose.

8.2 Prohibited Activities

Tenant agrees that the following activities, by way of example only and without limitation, are inconsistent with this Lease and are strictly prohibited: (a) any activity, or the maintaining of any object, which is not within the Permitted Use; (b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents; (c) any

activity or object which will overload or cause damage to the Premises; (d) any activity which constitutes waste or nuisance to owners or occupants of adjacent properties, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises; (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants or of owners or occupants of adjacent properties, including rights of ingress and egress; (f) use of the Premises for sleeping or personal living quarters; (g) any auction, distress, fire, bankruptcy or going-out-of-business sale on the Premises without the prior written consent of Port.

8.3 Premises Must Be Used

Tenant shall use the Premises continuously for the Permitted Use specified in Section 1.8 and shall not allow the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole discretion.

9. COMPLIANCE WITH LAWS AND REGULATIONS

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon to be in compliance with the Americans with Disabilities Act, 42 USC Sections 12101, et. seq.

Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City with certain police powers. Port's legal status as an agency of City shall in no way limit the obligation of Tenant to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including Port. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all Laws.

10. REGULATORY APPROVALS

Tenant shall faithfully observe and comply with all rules and regulations, which may be adopted by Port from time to time, and with all modifications thereof and additions thereto, provided Port has given prior written notice thereof to Tenant. All such rules and regulations shall be deemed to be additional terms and conditions of this Lease. Port shall not be responsible to Tenant for the nonperformance by any other tenant or person of any such rules and regulations. Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises may require a Regulatory Approval. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for said fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

11. MAINTENANCE AND REPAIRS

11.1 Maintenance and Repair Obligations

Except as otherwise provided in Section 1.9, Tenant shall at all times during the Term of this Lease, and at its sole cost and expense, maintain and repair in good and working order, condition and repair the Premises and all Improvements and Alterations thereon. Except as otherwise

provided in Section 1.9, Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Notwithstanding any maintenance obligations of Port set forth in Section 1.8, in the event that Tenant, its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the Premises, Port may repair the same at Tenant's expense and Tenant shall immediately reimburse Port therefor.

11.2 Port's Right to Inspect

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence. Without limiting Section 24 hereof, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear. If, after reasonable notice in writing from Port, Tenant fails to undertake such maintenance or repairs and complete the same with due diligence, then in addition to any other remedy available to Port, Port may make such maintenance or repairs at Tenant's expense and Tenant shall immediately upon invoice reimburse Port therefor.

11.3 Acts of God

Nothing contained herein shall require either Tenant or Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 18 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES

12.1 Utilities

Tenant shall make arrangements and shall pay all charges for all utilities to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, gas, electrical, water, sewer and telecommunications services. Except as otherwise provided in Section 1.10, Tenant shall pay all charges for said utilities, including charges for the connection and installation of the utilities specified in Section 1.10 from the location points specified therein.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by Tenant (whether within or outside the Premises). If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay said charges to Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

The parties agree that any and all utility improvements shall become part of the realty and are not trade fixtures. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate the Rent.

12.2 Services

Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

13. IMPROVEMENTS AND ALTERATIONS

13.1 Consent Required

Tenant shall not make, nor cause or suffer to be made, any Alterations or Improvements to the Premises until Tenant shall have procured and paid for all Regulatory Approvals required to be obtained for such Alterations and Improvements, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

13.2 Construction Requirements

All Alterations or Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be constructed in a good and workmanlike manner and in compliance with all applicable building, zoning and other applicable Laws, and compliance with the terms of and the conditions imposed in any Regulatory Approval;

(b) All Alterations and Improvements shall be performed with reasonable dispatch, delays beyond the reasonable control of Tenant excepted; and

(c) At the completion of the construction of the Alterations or Improvements, Tenant shall furnish one (1) set of "as-built" drawings of the same made on or to the Premises. Unless otherwise stated as a condition of the Regulatory Approval, this requirement may be fulfilled by the submittal after completion of the Alterations or Improvements of a hand-corrected copy of the approved permit drawing(s).

13.3 Improvements Part of Realty

All Alterations or Improvements to the Premises made by or on behalf of Tenant which may not be removed without substantial injury to the Premises shall immediately upon construction become part of the realty, shall be owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant, unless Port first waives its right to the Alterations or Improvements in writing.

13.4 Removal of Improvements

At Port's election made in accordance with Section 13.5 hereof, Tenant shall be obligated at its own expense to remove and relocate or demolish and remove (as Tenant may choose) any or all Alterations or Improvements which Tenant has made to the Premises, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall repair, at its own expense, in good workmanlike fashion any damage occasioned thereby.

13.5 Notice of Removal

Prior to the effective termination date of this Lease, Port shall give written notice to Tenant (herein "Notice of Removal") specifying the Alterations or Improvements or portions thereof which Tenant shall be required to remove and relocate or demolish and remove from the Premises, in accordance with Section 13.4. If termination is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver said Notice of Removal to Tenant within a reasonable time after the loss or destruction. If Tenant fails to complete such demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port upon demand therefor.

13.6 Removal of Non-Permitted Improvements

If Tenant constructs any Alterations or Improvements to the Premises without Port's prior written consent or without complying with section 13.2 hereof, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in the San Francisco Building Code for inspection of work performed without required permits.

14. SUITABILITY; ACCEPTANCE

Tenant acknowledges that Port has made no representations or warranties concerning the Premises, including without limitation, the seismological condition thereof. By taking possession of the Premises, Tenant shall be deemed to have inspected the Premises and accepted the Premises in an

"As-Is" condition and as being suitable for the conduct of Tenant's business.

15. LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Tenant within thirty (30) days following written demand by Port.

16. HAZARDOUS MATERIAL

16.1 Requirements for Handling

Neither Tenant nor its Agents or Invitees, shall Handle in, on or about the Premises any Hazardous Material without the prior written consent of Port, which consent shall not be unreasonably withheld so long as Tenant demonstrates to Port's reasonable satisfaction that such Hazardous Material is necessary to Tenant's business, will be Handled in a manner which strictly complies with all Environmental Laws and will not materially increase the risk of fire or other casualty to the Premises. Notwithstanding the foregoing, Tenant may Handle on the Premises janitorial or office supplies or Material in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws.

16.2 Tenant Responsibility

Subject to the restrictions set forth in Section 16.1 hereof, Tenant shall Handle all Hazardous Material discovered on the Premises as a result of Tenant's Improvements and/or Alterations to the Premises, or introduced on the Premises during Tenant's occupancy of the Premises, in compliance with all Environmental Laws. Notwithstanding the foregoing, Tenant shall not be responsible for the safe Handling of Hazardous Material introduced on the Premises during the Term of this Lease by City, Port or their Agents. Tenant shall protect its employees and the general public in accordance with all Environmental Laws. Port may from time to time request, and Tenant shall be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Material are being Handled in a manner which complies with all Environmental Laws. Port shall have the right to inspect the Premises for Hazardous Material at reasonable times, pursuant to Section 25.1 hereof.

16.3 Requirement to Remove

Prior to termination of this Lease, Tenant, at its sole cost and expense, shall remove any and all Hazardous Material introduced in, on, under or about the Premises during Tenant's occupancy of the Premises. Further, Tenant, at its sole cost and expense, shall remove any Hazardous Material discovered on the Premises during the Term of this Lease which is required to be removed by any governmental agency, including Port which removal would not have been required except for Tenant's use of the Premises or Tenant's alteration to the Premises. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Hazardous Material introduced onto the Premises during the Term of this Lease by the City, Port or their Agents. Except as otherwise provided in this Section 16 (Hazardous Material), Tenant shall not be obligated to remove any Hazardous Material introduced onto the Premises prior to the Commencement Date. Prior to the termination of this Lease, Port and Tenant shall conduct a joint inspection of the Premises for the purpose of identifying Hazardous Material existing on the Premises which Tenant is required to remove.

16.4 Tenant's Environmental Condition Notification Requirements

(a) **Notification of Any Release or Discharge.** Tenant shall immediately notify Port in writing of any release or discharge of any Hazardous Material, whether or not the release is in quantities that under any law would require the reporting of such release to a governmental or regulatory agency.

(b) **Notification of Any Notice, Investigation, or Claim.** Tenant shall also immediately notify Port in writing of, and shall contemporaneously provide Port with a copy of,

- (i) Any written notice of release of Hazardous Material in the Premises that is provided by Tenant or any subtenant or other occupant of the Premises to a governmental or regulatory agency;
- (ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Tenant or any subtenant or other occupant of the Premises from any governmental or regulatory agency;
- (iii) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency against Tenant or subtenant or other occupant of the Premises and that relates to the release or discharge of Hazardous Material on or from the Premises;
- (iv) Any claim that is instituted or threatened by any third party against Tenant or any subtenant or other occupant of the Premises and that relates to any release or discharge of Hazardous Material on or from the Premises; and

Any notice of the loss of any environmental operating permit by Tenant or any subtenant or other occupant of the Premises.

16.5 Failure to Comply

(a) In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

(i) Terminate the Lease and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from the cleanup of any Hazardous Material released into the Premises, soil, or groundwater; or

(ii) Require the cleanup of such Hazardous Material at the Tenant's sole expense while still enforcing the remaining terms and obligations of the Lease.

16.6 Survival

The provisions of this Section 16 shall survive the expiration or earlier termination of the Lease.

17. INSURANCE

17.1 Required Insurance Coverage

Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term of this Lease, the following insurance:

(a) General Liability Insurance

Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broadform property damage, personal injury, products and completed operations, and fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

(b) Automobile Liability Insurance

Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles are operated on the Premises.

(c) Worker's Compensation; Jones Act; U.S. Longshore and Harborworker's Act Insurance

Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with employer's liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 17.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(d) Personal Property Insurance

Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all-risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property.

(e) Business Interruption Insurance

Tenant, at its sole cost and expense, shall maintain business interruption insurance insuring that the Base Rent shall be paid to Port for a period of up to one year if Tenant is unable to operate its business at the Premises due to a risk insured against by the personal property insurance referred to in Section 17.1(d) above. Said insurance also shall cover business interruptions due to riots or civil commotion.

(f) Required by Law

Such other insurance as required by Law.

(g) See Addendum

Such other insurance as specified in the Addendum attached to this Lease, if any

17.2 Claims-Made Policies

If any of the insurance required in Section 17.1 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

17.3 Annual Aggregate Limits

If any of the insurance required in Section 17.1 is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

17.4 Payment of Premiums

Tenant shall pay the premiums for maintaining all required insurance.

17.5 Waiver of Subrogation Rights

The parties release each other, and their respective authorized representatives, from any claims for damage to the Premises or to the fixtures, personal property, Improvements or Alterations of either Port or Tenant in or on the Premises which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

17.6 General Insurance Matters

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds "**THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port. Tenant's compliance with this Section 17 shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall provide for thirty (30) days prior written notice of cancellation or intended non-renewal or reduction in coverage to Tenant and Port. Such notice shall be given in accordance with the notice provisions of Section 28 of this Lease.

(d) Tenant shall deliver to Port certificates of insurance and broker's endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth in Section 17.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in

amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

18. DAMAGE AND DESTRUCTION

18.1 Damage and Destruction

If the Premises or the Facility are damaged or destroyed by fire or other casualty, then either party may terminate this Lease by giving thirty days' written notice thereof. If both parties elect to keep this Lease in force, and funds for such repairs are appropriated by Port, in its sole discretion, and such repairs can be made within ninety (90) days after the date of such damage (the "Repair Period"), then Port shall repair the Premises. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises. In no event shall Port be required to repair any damage to Tenant's personal property or any paneling, decorations, railings, floor coverings, or any Improvements or Alterations installed or made on the Premises by or at the expense of Tenant.

18.2 Waiver

Port and Tenant intend that the provisions of this section govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California or under any similar Law now or hereafter in effect.

19. EMINENT DOMAIN

19.1 Takings

If all or any part of the Premises are taken under the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so taken as of the date of taking. In the case of a total taking of the Premises, this Lease shall terminate as of the effective date of such taking. In the case of a partial taking, either Port or Tenant may terminate this Lease as to the whole or the balance of the Premises by written notice within thirty (30) days after such date. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the monthly Rent to be paid thereafter shall be equitably reduced. In the event of any taking, Port shall be entitled to any amount awarded in connection therewith.

19.2 Award; Waiver

Port shall be entitled to any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with any taking or conveyance hereunder, and Tenant shall have no claim against Port or otherwise for the value of any unexpired term of this Lease. Notwithstanding the foregoing, to the extent that the same shall not diminish Port's recovery for such taking, Tenant shall have the right to make a claim, and to receive any award specifically made to Tenant, for moving expenses and for loss or damage to Tenant's trade fixtures, equipment and movable furniture. Port and Tenant intend that the provisions of this Section 19.2 govern fully in the event of condemnation, and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

20. INDEMNITY AND EXCULPATION

20.1 Indemnity

Tenant shall indemnify and hold Port, City, and their agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Tenant, or damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy or condition of the Premises or the activities therein by Tenant, its Agents or

Invitees. This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. This indemnity includes all such loss, damage, injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to indemnify Port and City, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Tenant shall include without limitation, indemnification from all loss and liability, including attorneys' fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this Lease with respect to any damage, destruction, injury or death occurring prior to such termination.

20.2 Exculpation

Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their Agents, and agrees to hold Port, City and their Agents harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City.

20.3 Hazardous Material Indemnification

Tenant shall indemnify, defend and hold Port, City and their Agents harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Term of this Lease as a result of the handling of Hazardous Material on the Premises by Tenant, its Agents or Invitees, including without limitation, all costs of investigating and remediating the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees.

This indemnification of Port and City by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Port or required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater in, on or under the Premises or in any Improvements released as a result of Tenant's occupancy, use or construction activities occurring on the Premises and/or as a result of Hazardous Material introduced in, on, under or about the Premises during the term of this Lease. Without limiting the foregoing, if the presence of any Hazardous Material in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Material in, on, under or about the Premises; provided that Port approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations hereunder shall survive the termination of this Lease.

21. ASSIGNMENT AND SUBLETTING

21.1 Assignment Prohibited

Tenant shall not make or permit any Assignment of this Lease. An Assignment of this Lease shall constitute an incurable breach by Tenant and shall be voidable at the option of Port. In the event Tenant requests an Assignment of this Lease, such request, at Port's option, shall be deemed to be a request for termination of this Lease, and this Lease shall terminate automatically thirty (30) days after the date of request.

As used herein, "Assignment" shall include the following (whether occurring voluntarily, involuntarily or by operation of Law):

(a) any direct or indirect assignment, conveyance, alienation or transfer of Tenant's entire interest in this Lease or the Premises;

(b) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(c) if Tenant is a partnership or an unincorporated association, (i) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (ii) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or profits of such partnership or association, or (iii) the dissolution of the partnership or association.

21.2 Conditions of Subletting

Tenant shall not Sublet the Premises, nor any part thereof, nor allow any person or entity other than Tenant or Tenant's authorized Agents or Invitees to occupy or use any portion of the Premises, without the prior written consent of Port in each instance, which consent may be withheld by Port in Port's sole discretion. Subletting of the Premises without Port's prior written consent shall constitute an incurable breach by Tenant and shall be voidable at the option of Port.

As used herein, "Sublet" or "Subletting" shall mean any direct or indirect conveyance, alienation, sublease or other transfer of any portion of Tenant's interest in this Lease or in the Premises, or the use of all or any portion of the Premises by any person or entity other than Tenant or Tenant's authorized Agents and Invitees. For purposes of this section, the definition of "Invitees" set forth in Section 2.19 hereof shall not include Tenant's sublessees.

21.3 Request to Sublet

Tenant shall give Port at least thirty (30) days prior written notice of its desire to Sublet (herein "Notice of Request to Sublet") and shall provide Port with the following information in writing: (1) the name, address, legal composition and ownership of the proposed sublessee, (2) a full description of the terms and conditions of the proposed Subletting, including copies of any and all proposed sublease agreements or other documents and instruments concerning the proposed Subletting, (3) a description of the proposed use of the Premises by the proposed sublessee, including any required or desired Alterations or Improvements to the Premises that may be undertaken by such sublessee in order to facilitate its proposed use, (4) complete information regarding all payments to be made or other consideration to be given in connection with the Subletting, and (5) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Subletting and the prospective sublessee. Tenant's Notice of Request to Sublet shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Subletting.

21.4 Port's Consent/Refusal to Consent

(a) Upon receiving a Notice of Request to Sublet, Port may consent to the proposed Subletting, subject to any conditions upon such Subletting, which conditions may include, without limitation: (i) that in the event this Lease is terminated prior to the expiration of any Subletting, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice

from Port; and (ii) that the sublease or other transfer agreement contain: (A) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 20 of this Lease; (B) a clause requiring the proposed sublessee to name City, Port and their Agents as additional insureds under all liability and other insurance policies; and (C) a clause requiring the proposed sublessee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed sublessee's business activities on the Premises.

(b) One hundred percent (100%) of all sums paid or payable to Tenant by the sublessee in excess of the then-existing Rent payable by Tenant attributable to the portion of the Premises being Sublet, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Subletting in whatever form (less expenses for verifiable, reasonable and customary brokerage commissions, Tenant Improvements, lease concessions, value of Tenant's trade fixtures conveyed and other expenses actually paid or obligations incurred by Tenant in connection with the Subletting and/or expenses of operating the Premises paid or incurred by Tenant) shall be paid by Tenant to Port immediately upon receipt thereof by Tenant as Additional Rent hereunder.

(c) Tenant acknowledges and agrees that each of the rights of Port set forth in this Section 21 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

(d) No consent to any proposed Subletting, whether conditional or unconditional, shall be deemed to be a consent to any other or further Subletting of the Premises, or to any other transfer of this Lease on the same or other conditions. No interest of Tenant in this Lease shall be assignable by operation of Law.

21.5 Fees for Review

Tenant shall reimburse Port for all costs, including without limitation attorneys' fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Subletting.

21.6 No Release of Tenant

The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease nor to be a consent to any subsequent Subletting or to be a release of Tenant from any obligation under this Lease. No Subletting of the Premises shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

21.7 Assignment of Sublease Rents

Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Subletting of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents.

22. DEFAULT BY TENANT

22.1 Event of Default

The occurrence of any one or more of the following events shall constitute a default by Tenant:

- (a) Failure by Tenant to pay when due any Rent;
- (b) Abandonment or vacation of the Premises by Tenant;
- (c) Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given by Port to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such thirty (30) - day period and diligently and in good faith continues to cure the default;
- (d) Either (i) the failure of Tenant to pay its debts as they become due, the written admission of Tenant of its inability to pay its debts, or a general assignment by Tenant for the benefit of creditors; or (ii) the filing by or against Tenant of any action seeking reorganization, arrangement, liquidation, or other

relief under any Law relating to bankruptcy, insolvency, or reorganization (unless such action is involuntary and is discharged within sixty (60) days) or seeking the appointment of a trustee, receiver or liquidator of Tenant's or any substantial part of Tenant's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Tenant's interest in this Lease, unless such seizure is discharged within ten (10) days.

Notices given under this section shall demand that Tenant perform the provisions of this Lease or pay the Rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Port so elects in the notice.

22.2 Port's Remedies

Upon default by Tenant, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

(a) Termination of Tenant's Right to Possession

Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession.

(b) Port's Right to Cure Tenant's Default

Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities, (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of ten percent (10%) or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

The remedies set forth in this Section 22.2 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

22.3 Damages

If Port elects to terminate this Lease under Section 22.2, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following:

(a) The worth at the time of award of the unpaid Rent which had been earned at the date of termination of this Lease;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and

(c) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of the Lease do not waive Port's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in Sections 22.3(a) and (b) shall be computed by allowing interest at an annual rate equal to the lesser of ten percent (10%) or the maximum non-usurious rate Port is permitted by Law to charge.

22.4 No Accord and Satisfaction

No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or

statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided by Law or in equity.

23. LITIGATION EXPENSES; ATTORNEYS' FEES

23.1 Litigation Expenses

If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Lease, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 23 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2 Appeals

Attorneys' fees under this Section 23 shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3 City Attorney.

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES

24.1 Entry for Inspection

Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises, for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.

24.2 General Entry

In addition to its rights pursuant to Section 24.1, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "For Sale" or "For Lease" signs at any time during the Term;

(d) To show the Premises to prospective real estate brokers, agents, buyers, or persons interested in an exchange, at any time during the Term; to show the Premises to prospective tenants at any time during the Term;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction.

24.3 Emergency Entry

Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to

obtain entry to the Premises. Entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion of them.

24.4 No Liability

Port shall not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in this Section 24, except damage resulting solely from the active negligence or willful misconduct of Port or its authorized representatives.

24.5 Non-Disturbance

Port shall use its best efforts to conduct its activities on the Premises as allowed in this Section 24 in a manner which, to the extent reasonably practicable, will cause the least possible inconvenience, annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM

25.1 Surrender

Upon termination of this Lease Tenant shall surrender to Port the Premises and all Improvements thereon in good condition (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 18 and 19 hereof), except for Improvements and Alterations which Tenant has the right to remove or is obligated to remove under the provisions of Section 13. Tenant shall repair any damage to the Premises for which Tenant is liable under this Lease. Tenant shall remove all of its personal property and shall perform all restoration made necessary by the removal of any Improvements, Alterations or Tenant's personal property within the time periods stated in this Lease.

Port may elect to retain or dispose of any Improvements or Tenant's personal property which Tenant does not remove from the Premises as allowed or required by this Lease by giving at least ten (10) days' prior written notice of such election to Tenant. Except with respect to (i) Tenant's personal property as to which Port has waived in writing any right it may have or may have acquired, (ii) Tenant's property which is covered by any filed financing statement, and (iii) any Hazardous Material left in or on the Premises, title to any Improvements, Alterations or to Tenant's personal property which Port elects to retain or dispose of upon expiration of the ten (10)-day period shall vest in Port. Tenant waives all claims against Port for any damage to Tenant resulting from Port's retention or disposition of any Improvements, Alterations or Tenant's personal property. Tenant shall be liable to Port for all costs incurred by Port for storing, removing or disposing of any Improvements, Alterations or Tenant's personal property.

If Tenant fails to surrender the Premises as required by this Section 25.1, Tenant shall hold Port harmless from all damages resulting from Tenant's failure to surrender the Premises, including, but not limited to, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises. No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a notice from Port to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2 Quitclaim

Upon termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and Leasehold Mortgages and without payment therefor by Port and shall be surrendered to Port upon such date. Upon or at any time after the date of termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any Improvements or Alterations that Port agrees are to remain part of the Premises pursuant to the provisions of Section 13.3 above.

26. MINERAL RESERVATION

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of said Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from the Mineral Reservation area located by the California Grid System as more particularly described in Section 1.10 hereof.

27. CITY REQUIREMENTS

27.1 Non-Discrimination

(a) **Covenant Not to Discriminate** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) **Subleases and Other Subcontracts** Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all Subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this lease.

(c) **Non-Discrimination in Benefits** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease** On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the Nondiscrimination in Contracts and Benefits form approved by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

27.2 MacBride Principles-Northern Ireland

City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

27.3 Tropical Hardwood and Virgin Redwood Ban

City urges Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product.

27.4 Tobacco Products Advertising Ban

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

27.5 First Source Hiring

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Section 83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(a) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the **Job Survey Form** provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the **Job Survey Form** to the Port within thirty (30) days after execution of the lease by the Port and Tenant.

For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the premise, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(b) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically Disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After ten (10) business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development System for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of Two Thousand Seventy Dollars (\$2,070) for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

27.6 Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated

from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us/HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease.

(d) If, within thirty (30) days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty (30)-day period Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000 (or \$50,000 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with

the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000 in the fiscal year.

27.7 Pesticide Prohibition

Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Port an integrated pest management (IPM) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 39.8 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant if Tenant seeks in good faith an exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

28. NOTICES

Except as otherwise expressly provided in this Lease or by Law, any and all notices or communications required or permitted by this Lease or by Law to be served on, given to or delivered to either party by the other party shall be in writing and shall be given by one of the following methods: (a) delivering the notice in person, (b) sending the notice by United States Mail, first class, postage prepaid, or (c) sending the notice by overnight courier or mail, with postage prepaid, to the mailing address set forth in Section 1.12. Subject to the restrictions set forth below and only for the convenience of the parties, copies of notices also may be given by telefacsimile to the telephone number set forth in Section 1.12. Either party may change such party's mailing address or telefacsimile number at any time by giving written notice of such change to the other party in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Lease shall be deemed to be duly served, given, delivered, made or communicated on the date personal delivery actually occurs or, if mailed, on the date of deposit in the United States Mail. A person or party may not give official or binding notice by telefacsimile. Service of process at Tenant's address set forth in Section 1.12 or other address, notice of which is given in accordance with the terms of this Section 28, shall be valid and binding upon such party.

29. TIME IS OF THE ESSENCE

Time is of the essence as to each and every provision of this Lease.

30. SIGNS

Tenant shall not have the right to place, construct or maintain any sign, advertisement, awning, banner or other exterior decoration on the Premises without Port's prior written consent.

Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Tenant Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

31. NO LIGHT, AIR OR VIEW EASEMENT

Any diminution or shutting off of light, air or view by any structure which may be erected on lands

adjacent to the Facility shall in no way affect this Lease or impose any liability on Port.

32. Intentionally Deleted.

33. WAIVER OF RELOCATION ASSISTANCE RIGHTS

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code Section 7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 19 hereof (Eminent Domain).

34. MISCELLANEOUS PROVISIONS

34.1 California Law

This Lease shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter.

34.2 Entire Agreement

This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

34.3 Amendments

No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

34.4 Severability

Except as is otherwise specifically provided for in this Lease, invalidation of any provision of this Lease, or of its application to any person, by judgment or court order, shall not affect any other provision of this Lease or its application to any other person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Lease.

34.5 No Party Drafter; Captions

The provisions of this Lease shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Lease.

34.6 Singular, Plural, Gender

Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

34.7 Successors

The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

34.8 Real Estate Broker's Fees

Each party shall be responsible for the payment of all fees and commissions to any real estate broker with whom such party has contracted. Each party shall hold the other party harmless from any and all damage resulting from any claim which may be asserted against the other party by any broker, finder or other person with whom the other party has or purportedly has dealt with respect to this Lease.

34.9 Counterparts

For convenience, the signatures of the parties to this Lease may be executed and acknowledged

on separate pages which, when attached to this Lease, shall constitute this as one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

34.10 Authority

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

34.11 Waiver

No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease at San Francisco, California,
as of the last date set forth below.

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating
by and through the SAN FRANCISCO PORT COMMISSION

By _____
Kenneth Winters
Director of Real Estate

Dated: _____

TENANT:

By _____

Its _____

Dated _____

By _____

Its _____

Dated _____

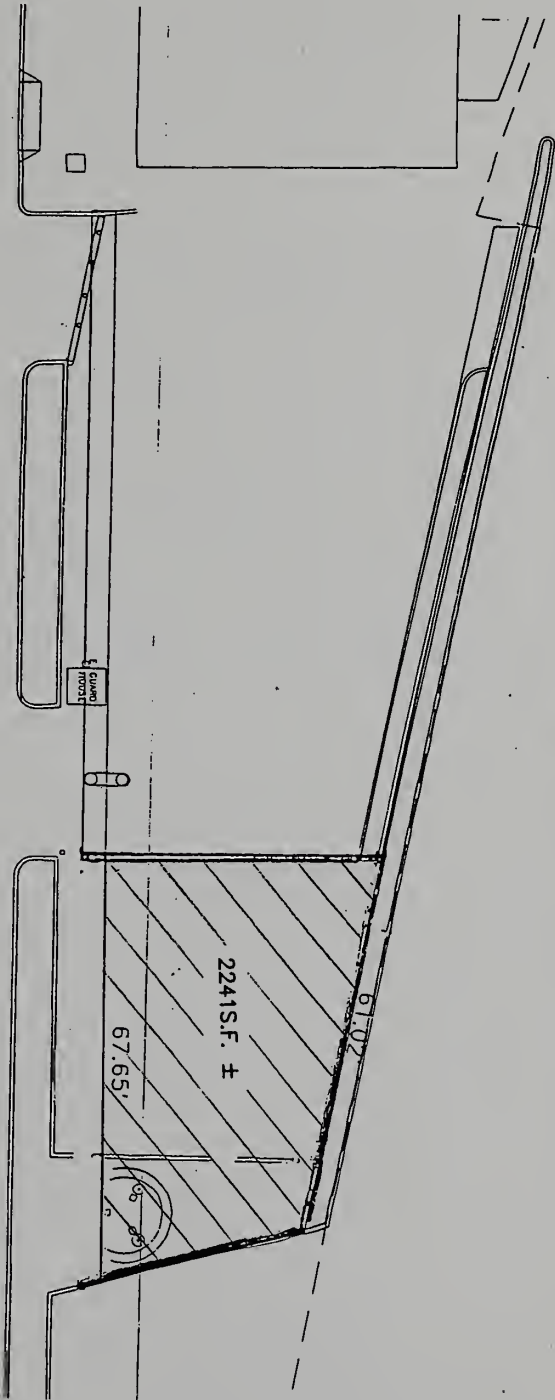
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Deputy City Attorney

Lease Prepared By: Nicolas J. Dempsey, Property Manager _____
(initials)

\\PACIFICA\USERS\TENANT\Lease 2002\Boudin Bakeries 13354.doc



JEFFERSON STREET

MASON STREET

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO

EXHIBIT A
INITIALS: PORT _____ TENANT _____

BOUDIN PROPERTIES, INC.
160 JEFFERSON

LEASE #13554

DESIGNED BY:	CHECKED BY:
DRAWN BY: S. CHU	DATE: 10-1-02
CONTRACT NO.	SCALE:
DRAWING NO.	SHEET NO.

OF SHEETS

COPY

CITY AND COUNTY OF SAN FRANCISCO

WILLIE L. BROWN, JR., MAYOR

SIDEWALK ENCROACHMENT PERMIT AND REVOCABLE LICENSE

E-13555

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

BOUDIN PROPERTIES, INC.

Douglas F. Wong
Executive Director

SAN FRANCISCO PORT COMMISSION

Michael Hardeman, President
Kimberly Brandon, Vice President
Denise McCarthy, Commissioner
Brian McWilliams, Commissioner
Pius Lee, Commissioner

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Attachments

Exhibit A

SAN FRANCISCO PORT COMMISSION

SIDEWALK ENCROACHMENT PERMIT AND REVOCABLE LICENSE E - 12586

This Sidewalk Encroachment Permit and Revocable License ("License"), dated for reference purposes only as of October 9, 2002 by and between the City and County of San Francisco ("City"), acting by and through the San Francisco Port Commission ("Port"), and Boudin Properties, Inc., a California corporation ("Licensee").

This License is entered into upon the following facts and understanding of the parties:

A. Licensee as tenant under Lease No. L-7495, dated May 20, 1970 (the "Lease") with the Port of San Francisco, California and desires to use the adjacent sidewalk owned by Port as shown on the attached Exhibit A as a sidewalk cafe under the terms of a non-exclusive revocable license.

B. Port is willing to allow Licensee to enter onto the License Area for said purpose, said entry to be in accordance with the conditions of this License.

NOW, THEREFORE, the parties hereto agree as follows:

Port hereby grants to Licensee a temporary, non-exclusive, revocable license to enter upon the License Area for the non-exclusive use as a sidewalk cafe and for this use solely. Licensees use of the Licensed Area shall be subject to all of the following terms and conditions:

1. APPEARANCE

The tables, chairs and other furniture used in the License Area shall be attractive, of good quality and in keeping with the image of a first class restaurant. Samples of the tables and chairs shall be submitted to the Port for written approval prior to use. All such furniture shall be detached and arranged and approved by Port so as to prevent any interference with general pedestrian use of the sidewalk and to minimize any potential tripping or other hazards. All such furniture shall be removed from the sidewalk and stored in the leased premises demised in the Lease when Licensee is not open for business. Licensee shall not be permitted to place any signs in the License Area without prior consent of Port. Port reserves the right to approve of Licensee's display in the License Area and to revoke this license if such display is not in compliance with Port's approved display.

2. PERCENTAGE RENTAL

All sales made on the License Area shall be included in the Gross Receipts pursuant to Section 2(b) of the Lease and Licensee shall pay percentage rent to Port on the Gross Receipts generated on the Licensed Area as provided in Section 2(b) of the Lease.

3. SUITABILITY, ACCEPTANCE

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By taking possession of the License Area, Licensee shall be deemed to have inspected the License Area and accepted the License Area in an "As-Is" condition and as being suitable for the conduct of Licensee's business.

4. LIENS

Licensee shall keep the License Area free from any liens arising out of any work performed, materials furnished or obligations incurred by Licensee or its Agents. In the event that Licensee shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this License or by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Licensee within thirty (30) days following written demand by Port.

5. MAINTENANCE

Licensee shall maintain the License Area in a neat, clean, orderly and attractive condition at all times, free from garbage, debris and other waste matter. Port reserves the right to hose down or sweep the License Area after business hours as Port deems necessary and to provide additional maintenance services if Licensee fails to maintain the License Area in the condition required hereunder, and Licensee shall reimburse Port for the reasonable cost of such additional services. Licensee shall prevent any loitering in or about the License Area by persons other than Licensee's patrons.

6. DURATION

This License shall be effective upon October 9, 2002 and shall continue until revoked by either party. Either Licensee or Port may cancel and revoke this License at any time and without cause upon twenty-four hours written notice to the other. Prior to the effective date of such revocation, Licensee shall remove or cause to be removed all personal property of Licensee, its agents, contractors and licensees, without expense to Port, and shall restore the License Area to a condition satisfactory to Port. This License is personal to Licensee and shall not be assignable or transferable by Licensee under any circumstances.

7. USE; MANNER OF USE

Licensee shall use the License Area only for use as a sidewalk cafe in accordance with the terms and conditions hereof and for no other purpose. Changes in type or function of business or other changes in use shall be made only upon the express written consent of Port. Licensee shall not use Port property in any manner that will constitute waste, nuisance or unreasonable annoyance to Port, its tenants or the owners or occupants of adjacent properties. Licensee's operations hereunder shall not interfere or impede the use of any roadway or sidewalk upon which the License Area is located by the public, other Port tenants or the Port. Licensee shall leave the License Area in as good or better condition than that in which the License Area existed prior to Licensee entering the License Area.

8. INSURANCE

a Licensee, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the term of this License, insurance as follows:

- (1) Workers' Compensation Insurance with employer's liability limit not less than One Million Dollars (\$1,000,000.00) each accident, but only if Licensee has employees as defined by the California Labor Code;

(2) Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, independent contractors, broadform property damage, fire damage legal liability not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), personal injury, products and completed operations.

(3) Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired vehicles.

b Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the term of this License and, without lapse, for a period three years beyond the License expiration, to the effect that, should occurrence during the License term give rise to claims made after expiration of the License, such claims shall be covered by such claims-made policies.

c Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation of legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified above.

d All liability policies required by this License shall name as additional insured City and Port, their officers, agents and employees, and shall be primary to any other insurance available to the additional insured. All policies shall provide thirty-(30) days prior written notice of cancellation, non-renewal or reduction in coverage in person or by mail to Port's address as set forth in Section 18 of this License. The permission for Licensee to use the License Area pursuant to this License shall automatically terminate upon the termination of such insurance. Licensee shall furnish certificates of insurance in a form acceptable to Port evidencing all coverage required prior to the commencement date of the License with complete copies of policies upon Port's request.

e Port and Licensee shall periodically review the limits and types of insurance carried pursuant to this Paragraph to this Section 8. If it is found to be the general commercial practice in the City and County of San Francisco to carry liability insurance in an amount substantially greater than the amount then being carried by Licensee with respect to risks comparable to those associated with the License Area, the amounts carried by Licensee shall be increased to conform to such general commercial practice.

9. COMPLIANCE WITH LAWS

Licensee, at Licensee's cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Licensee's use and occupation of the License Area in effect either at the time of execution of this License or at any time during the term hereof. Licensee further understands and agrees to be responsible and comply within the License Area with 42 USC 12101, et seq., commonly known as the Americans with Disabilities Act.

Licensee understands and agrees that Port is granting this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers. Port's legal status as a department of the City shall in no way limit the obligation of the Licensee to obtain any required approvals from City departments, boards or

commissions which have jurisdiction over the License Area, including the Port. By granting this License, Port is in no way modifying or limiting the obligation of Licensee to cause the License Area to be used and occupied in accordance with all laws, rules and regulations of the City, the State of California and the United States. Without limiting the generality of the foregoing, Licensee specifically agrees to obtain any and all necessary permits, licenses or approvals from the San Francisco Police Department as may be necessary to use this License Area.

10. HAZARDOUS MATERIALS

a Use Prohibited. Neither Licensee nor its agents, employees, contractors, licensees, sublessees, assignees, concessionaires or invitees shall use, handle, store or dispose of any Hazardous Materials in, on, under or about the License Area. If Licensee breaches the foregoing restriction, Licensee shall be solely responsible for and shall indemnify, defend and hold Port and City, their officers, employees and agents, harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in valuation of the License Area, and sums paid in settlement of claims and for attorneys' fees, consultant fees and expert fees) which arise during or after the term of this License as a result of any contamination directly or indirectly arising from the activities which are the basis for such breach. This indemnification of Port and City by Licensee includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work. Licensee shall promptly take all actions, at its sole cost and expense, as are necessary to return the License Area to the condition existing prior to the introduction of any such Hazardous Material, provided Port's approval of such actions shall first be obtained and Licensee shall fully cooperate in connection with any such clean-up, restoration or other work, at Licensee's sole costs and expense. Furthermore, Licensee shall immediately notify Port of any inquiry, test, investigation or enforcement proceeding by or against Licensee or the License Area concerning the presence of any Hazardous Material. Licensee acknowledges that Port, at Port's election, shall have the sole right, at Licensee's expense, to negotiate, defend, approve and appeal any action taken or order issued by any governmental authority with regard to any Hazardous Material contamination which Licensee is obligated hereunder to remediate. Licensee's obligations under this Paragraph 10 shall survive termination of this License.

b Definition of Hazardous Material. "Hazardous Material" shall mean asbestos, any petroleum fuel and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", or "toxic pollutant" under the California Health and Safety Code and/or under the Comprehensive Environmental Response, Compensation and Liability Act, 42. U.S.C. Section 9601, et seq.

11. NO COSTS TO PORT

Licensee shall bear all costs or expenses of any kind or nature in connection with its use of the License Area.

12. MAINTENANCE; REPAIR OF DAMAGE

Licensee shall keep the License Area and appurtenances in good and sanitary order, condition and repair. If any portion of the License Area or any other property of Port is damaged by any of the activities permitted hereunder or conducted by Licensee, its officers, agents, employees,

invitees or licensees, Licensee shall immediately, at its own cost and expense, repair any all such damage and restore said property to its undamaged condition. Port has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the License Area. Licensee has the sole responsibility to locate the same and to protect the same from damage during any activity by Licensee and shall be solely responsible for any damage to utilities.

13. INDEMNIFICATION

Licensee shall indemnify and hold Port, City, and their agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Licensee, or damage to or destruction of any property occurring in, on or about the License Area, or any part thereof, from any cause whatsoever, or (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy or condition of the License Area or the activities therein by Licensee, its Agents, or clients, customers, invitees, guests, members, licensees, assignees and subtenants (collectively, "Invitees"). This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this License. This indemnity includes all such loss, damage, injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Licensee, its Agents or invitees.

In addition to Licensee's obligation to indemnify Port and City, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Licensee's obligation to defend shall arise at the time such claim is tendered to Licensee by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Licensee shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this License with respect to any damage, destruction, injury or death occurring prior to such termination.

14. WAIVER OF CLAIMS

Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their officers, agents and employees, and agrees to hold Port and City and their officers, agents and employees harmless from any claims for damages, including all claims arising from the joint or concurrent negligence of Port or City, or their officers, agents, or employees, but excluding any intentionally harmful acts committed solely by Port or City.

15. WAIVER OF RELOCATION

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation

Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

16. ATTORNEYS' FEES

If Port or Licensee commences an action against the other party arising out of or in connection with this License, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit. For purposes of this License, reasonable attorneys' fees of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience who practice in the City in law forms with approximately the same number of attorneys as employed by the Office of City Attorney.

17. CITY REQUIREMENTS

a. Non-Discrimination.

(i) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identify, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of any City employee working with or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(ii) Subleases and Other Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (i) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this lease.

(iii) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(iv) HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth

herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

b. MacBride Principles-Northern Ireland.

City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

c. Tropical Hardwood and Virgin Redwood Ban.

City urges Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product.

d. Tobacco Products Advertising Ban.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property, which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

e. Pesticide Prohibition.

Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Port an integrated pest management (IPM) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in section 39.1 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively, if this Lease is in effect on these dates.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 39.8 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant if Tenant seeks in good faith an

exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

18. NOTICES

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Port: **Manager, Leasing and
Commercial Property Management
Port of San Francisco
Pier 1
San Francisco, CA 94111**

Licensee: **Boudin Properties, Inc.
132 Hawthorne Street
San Francisco, CA 94107**

And, if Tenant is a corporation, to Tenant's agent for service of process:

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this License shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

19. MISCELLANEOUS PROVISIONS

- a Time is of the Essence. Time is of the essence of each provision of this License.
- b Signs. Licensee shall not have the right to place, construct, or maintain any sign, advertisement, awning, banner, or other exterior decoration on or about the License Area without Port's written consent, which consent may be withheld in Port's sole discretion.
- c California Law. This License shall be construed and interpreted in accordance with the laws of the State of California.
- d Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this License.
- e Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by Port and Licensee.
- f Severability. Invalidation of any provision of this License, or of its application to any person, by judgement or court order shall not affect any other provisions of this License or its application to any other person or circumstance, and the remaining portions of this License shall continue in full force and effect, unless enforcement of this License as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this License.
- g Waiver. No delay or omission in the exercise of any right or remedy of Port on any default by Licensee shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Port of any delinquent license fee shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular license fee payment involved. Port's consent to or approval of any act by Licensee requiring Port's

consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee.

h Authority. The undersigned signator on behalf of Licensee has full corporate power and authority to enter into this License and to consummate the transactions contemplated by it. This License has been duly authorized by all necessary action on the part of Licensee and no other action on the part of Licensee is necessary to authorize the execution and delivery of this License.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the last date written below.

PORT

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION

By _____
Kenneth Winters
Director of Real Estate Division

Dated: _____

LICENSEE

BOUDIN PROPERTIES, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

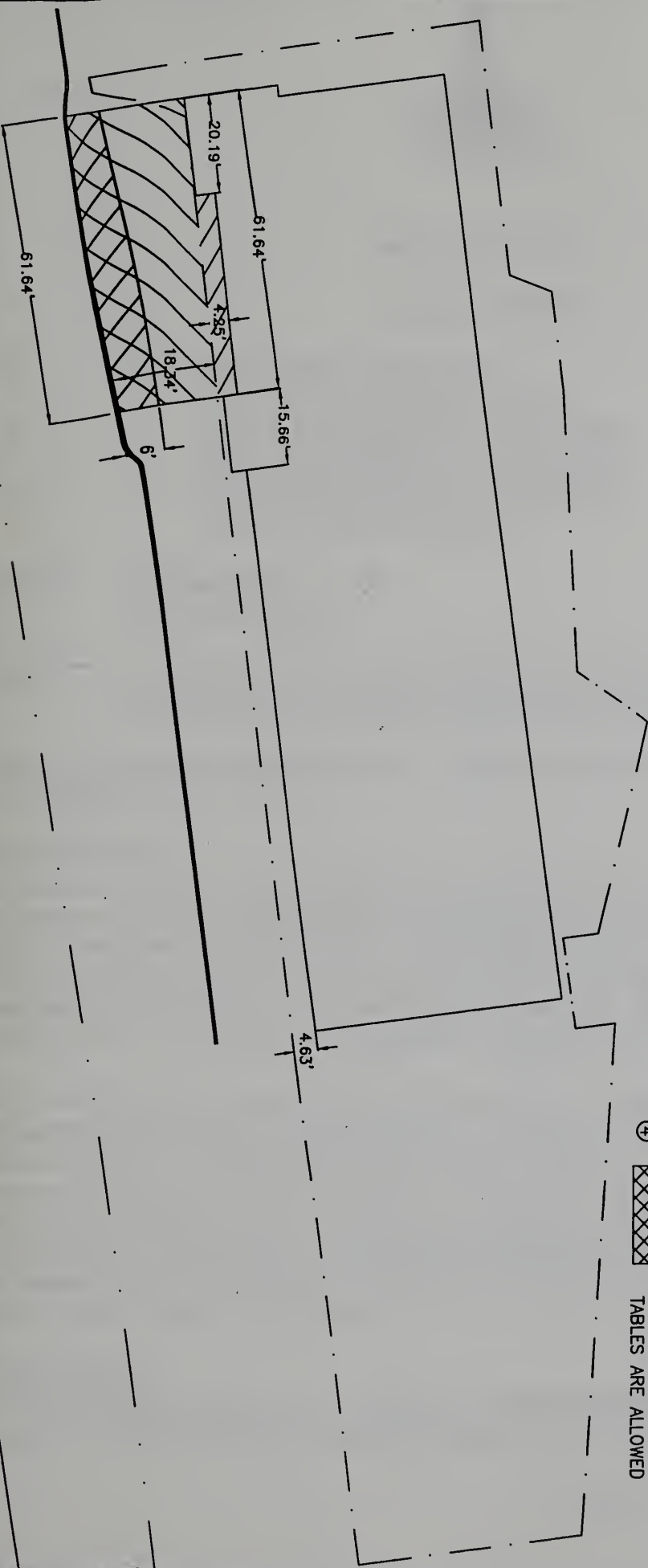
Date: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: _____
Deputy City Attorney

Permit Prepared By: Nicolas J. Dempsey, Commercial Property Manager _____ (Initial)

- TABLES SHALL BE RESTRICTED TO AREAS TWO (2), THE PREMISES, AND FOUR (4) AS FOLLOWS:
- AREA TWO (2) SHALL HAVE NO TABLES OR SEATING THAT EXTEND BEYOND THE LEASE LINE.
 - AREA FOUR (4) SHALL HAVE NO MORE THAN EIGHT (8) TABLES NOT TO EXCEED, FOURTY (40) INCHES IN DIAMETER WITH SEATING FOR NO MORE THAN FOUR (4) PEOPLE AT EACH TABLE.



- LEGEND:
- ① - - - - - LEASE LINE
 - ② [Hatched Box] PREMISES
 - ③ [Hatched Box] ENCROACHMENT
 - ④ [Cross-hatched Box] ENCROACHMENT WHERE TABLES ARE ALLOWED

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SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO

EXHIBIT A
INITIALS: PORT _____ TENANT _____

BOUDIN PROPERTIES, INC.
160 JEFFERSON

SIDEWALK ENCROACHMENT PERMIT
& REVOCABLE LICENSE #E-13555

DESIGNED BY: E. RILEY	CHECKED BY: E. RILEY
DRAWN BY: S. CHU	DATE: 10-1-02
CONTRACT NO.	SCALE: 1" = 20'-0"
DRAWING NO.	SHEET NO.
	OF 1 SHEETS



MEMORANDUM

October 2, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams, Commissioner
Hon. Denise McCarthy, Commissioner
Hon. Pius Lee, Commissioner

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Proposed Lease No. L-13243 with Butler Enterprise Group, L.L.C. for the Development and Operation of a Restaurant at 601 Cesar Chavez Street.

DIRECTOR'S RECOMMENDATION: APPROVE LEASE NO. L-13243 WITH BUTLER ENTERPRISE GROUP, L.L.C.

BACKGROUND

On September 4, 2001, the Port re-issued a Request for Proposals ("RFP") for the development and operation of a new restaurant adjacent to and west of the Pier 80 Container Cargo Terminal at 601 Cesar Chavez Street (the "Site"). The RFP had been reissued because the developer who had been selected in the previous RFP issued in October 1999 had ultimately withdrawn from negotiations. The Site previously was operated as a restaurant called the "Pier 80 Inn" under Port Lease No. L-7199, which was terminated on April 30, 1996.

The Pier 80 area is the home of numerous commercial and industrial businesses. While these businesses employ hundreds of workers, there are no eating establishments within walking distance of Pier 80. The Port issued the RFP with the objective of re-establishing a food service business at the former Pier 80 Inn site to provide the surrounding neighborhood and businesses with an affordable, high quality dining choice. The Port also seeks to maximize revenue, create goodwill with the truckers and ILWU workers in the Pier 80 area, renovate a currently vacant and underutilized facility, and activate the Pier 80 area by drawing workers from the adjacent Pier 80 Cargo Terminal and businesses.

RESPONDENT

The Port received one response to the RFP, from Butler Enterprise Group, L.L.C. ("Butler"). Butler is an existing Port tenant in good standing leasing space in an office building adjacent to

This Print Covers Calendar Item No. 7B

the Site. Butler has proposed to develop the Site with a pre-fabricated building of approximately 4,000 square feet, replacing the existing 1,868 square foot structure; a 1,000 square foot outside patio; and 3,750 square feet of adjacent parking (the "Project"). Butler projects total sales of \$135,550 for first year operations, growing to \$655,222 in year 5, with net income of \$17,190 for the first year increasing to \$881,412 in year 5. These projections provide Port base monthly rent of \$2,014 against 5% of the gross profit (total sales less the cost of goods sold). Percentage rent payments to the Port are projected to increase from \$5,003 in the first year to \$24,173 in year 5.

The Port and Butler entered into an Exclusive Right to Negotiate ("ERN") on February 1, 2002 after Butler submitted the required \$5,000 non-refundable fee. Pursuant to negotiations between Port staff and Butler under the ERN, Butler seeks to develop and operate the Project on the terms noted below.

PROPOSED LEASE TERMS

Term:	9 years
Commencement Date:	Upon issuance of requisite building permit by Port
Base Rent:	\$2,014.00/month (\$0.19/s.f.)
Base Rent Adjustment:	At 5 th anniversary of Lease, Base Rent may be adjusted to fair market value as represented by similar restaurant properties located on or near the waterfront
Percentage Rent:	5% through year 5; 6% for the remainder of the term.
Security Deposit:	Equal to 2 month's Base Rent
Construction Period Rent:	No rent for earlier of 9 months from the Commencement Date or issuance date of a certificate of occupancy by Port.
Maintenance/Repairs:	Tenant's sole responsibility
Utilities:	Tenant's sole responsibility
Tenant Improvements:	Estimated at \$250,000
Performance Bond:	Before commencing construction of improvements, Tenant shall furnish to Port a bond in an amount not less than \$250,000 that shall remain in effect until the entire cost of the work has been paid and the new improvements have been insured.
Lease Guaranty:	The lease requires a Guarantor of the performance of all Tenant lease obligations.

STAFF ANALYSIS AND RECOMMENDATION

Butler's proposal meets the objectives of the RFP, and the lease terms stated above are consistent with those stipulated in the RFP. Further, the San Francisco Planning Department's Major Environmental Analysis Division has determined that the Project is categorically exempt from CEQA review under Class: 3 (c), Demolition and Construction of Small Structures.

Based on the above, Port staff recommends that the Port Commission approve the terms of Lease No. L-13243, for the development and operation of a restaurant at 601 Cesar Chavez Street by Butler Enterprise Group, L.L.C. A copy of the lease is on file with the Port Commission Secretary.

Prepared by: Phil Williamson, Senior Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-48

- WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, Under Charter Section 3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, On September 4, 2001, the Port issued a Request for Proposals ("RFP") for the development and operation of a restaurant at 601 Cesar Chavez Street (the "Restaurant Project"); and
- WHEREAS, On November 5, 2001, Butler Enterprise Group, L.L.C. ("Butler"), the sole respondent to the RFP, submitted a proposal for the Restaurant Project that complied with the submittal requirements stated in the RFP; and
- WHEREAS, On February 1, 2002, the Port entered into exclusive negotiations with Butler for the Restaurant Project; and
- WHEREAS, Butler desires to enter into a lease with the Port (Port Lease No. L-13243) for the Restaurant Project on the terms outlined in the Staff Memorandum to Port Commissioners dated October 2, 2002, for Agenda Item 7B ("Staff Memorandum"); and
- WHEREAS, Port staff recommends that the Port Commission authorize the Executive Director to enter into Lease No. L-13243 with Butler; and
- WHEREAS, Based on staff's recommendation and its own review, the Port Commission finds that Butler's lease proposal as outlined in the Staff Memorandum meets the objectives of the RFP for the Restaurant Project;
- WHEREAS, The City Planning Department's Major Environmental Analysis Division has determined that the Restaurant Project, as proposed to be developed by Butler, is categorically exempt from environmental review under the California Environmental Quality Act; NOW, THEREFORE, BE IT
- RESOLVED, That this Commission hereby authorizes the Executive Director of the Port, or his designee, to enter into Lease No. L-13243 with Butler for the Restaurant Project substantially in the form on file with the Commission Secretary, with any changes to such lease as shall be approved by the San Francisco City Attorney consistent with the terms outlined in the Staff Memorandum and this Resolution; and be it further

RESOLVED, That, if through further negotiation and execution of Lease No. L-13243 with Butler, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify Butler's proposed Restaurant Project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed Restaurant Project, (3) reject the Restaurant Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project, or (4) approve the proposed Restaurant Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse impacts of the Project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 8, 2002.

Secretary

SAN FRANCISCO PORT COMMISSION

OCTOBER 8, 2002 MINUTES OF THE REGULAR MEETING

DOCUMENTS DEPT.

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MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE MCCARTHY
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO

PORT COMMISSION

MINUTES OF THE REGULAR MEETING OCTOBER 8, 2002

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:05 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy, Brian McWilliams and Pius Lee.

2. APPROVAL OF MINUTES - September 10, 2002 Regular Meeting

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. The minutes of the September 10, 2002 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Wong reported the following:

- Fleet Week: Fleet Week returns to the San Francisco waterfront this weekend. The Navy's Parade of Ships will kick off the Saturday morning events starting at 11:00 a.m. The air show will feature appearances by the US Navy Blue Angels on Saturday, October 12 and Sunday, October 13. Mr. Wong introduced Frank O'Neill and Captain Dwayne Oslund from the Fleet Week Committee.

As a token of appreciation to the Port Commission and its staff who helped and contributed to the many successful Fleet Weeks over the years, Mr. O'Neill presented the Commission a framed autographed picture of the Blue Angels.

Captain Oslund thanked the Port for allowing them to bring the Navy, the Marine Corps and the Coast Guard to conduct the air show. He acknowledged Renee Dunn, John Davey, Phil Williamson, Elliott Riley, and Peter Dailey for all their efforts. He also thanked the Port for its financial support to Fleet Week.

Commissioner Hardeman acknowledged former Port Commissioner Frank O'Neill for his work and strong ties to Fleet Week. He thanked him and Captain Oslund for all their efforts.

Port Lockout: Mr. Peter Dailey, Director of Maritime, provided the Commission a status report regarding the lockout and its impact on the Port of San Francisco. The labor lockout started on September 27. Since that time, several ships were not able to call at the Port: Star Shipping, Star Alabama, Samoa of South Seas Steamship, Donata from CC&I (Chilean Line), Handy Islander from Sunrise Shipping and the Centurion

Containers from Maruba, and the CSL Spirit. The lockout has a huge impact on the Port's cargo volumes. Port staff worked very hard in recent months to generate and attract new types of cargo other than the containerized cargo, steel and lumber. Staff is concerned that this interruption of service will impact its ability to gain cargo in the future. The good news is the Crystal Harmony is at the Port today and there will be five other cruise ships calling at the Port. The cruise lines and the ILWU have been working directly, bypassing the PMA members, and working out arrangements to handle those vessels. The Crystal Cruise operation staff commented on how well everyone had been working together and the operation had been very smooth. President Bush signed a temporary restraining order today instructing both the PMA and the ILWU to meet at a courthouse today. The restraining order will enact the back-to-work rule. It's an 80-day-cooling-off period. It is anticipated that work could commence on the waterfront tomorrow night or Thursday. Staff hopes that the situation can get resolved quickly as it is having a real impact on the Port's cargo operations.

Commissioner McWilliams indicated that depending on the outcome of the hearing this afternoon, the injunction would either be enacted or not. If it's not, the President indicated that he will intervene. This afternoon the employers were preparing to work as soon as tonight. It is pretty clear that there is going to be an injunction. There was a tentative agreement to extend the contract for 30 days and go back to work that was mediated by the Federal Mediation and Conciliation Service that PMA initially agreed to but changed their mind after their caucus. They ended up invoking the Taft Hartley Act which will be accomplished before the day is over so that the 80-day cooling off period will begin. It will expire around December 27 so that the heavy volume period will be behind the industry and no meaningful negotiations or agreement could have been accomplished by then. The Taft Hartley Act has been a disaster for labor negotiations in any industry. The last time it was invoked in the San Francisco waterfront was in 1971 when there was ultimately a 7-month strike. This is a worrisome time for all. In the past, when labor management issues played themselves out, there were work stoppages. The union and management have always ensured that essential cargo, passengers, military, and mails were worked out. This is a very unique situation. This is the first time that the unions continued on with that program and the employers have refused to accommodate it. With the help of the Port of San Francisco and the cruise lines, the union was able to provide services independent of the traditional PMA labor contractors. For that, the union should be commended. If things indeed worked smoother than they have ever been, this should be revisited in the future. He was pleased that the passenger ships were working and essential cargoes were moving. The Port did a tremendous job in bringing work and maintaining a maritime presence in San Francisco. It is unfortunate that the labor lockout has impacted that effort. He was hopeful that it won't be a permanent situation so that all the good work that the Maritime staff has done will continue to bear fruit for the Port and bring ships to the Port. He thanked staff for their hard work.

4. CONSENT

- A. Request for authorization to accept and expend \$106,686 in grant funds from the California Resources Agency-Coastal Impact Assistance Plan for the Ferry Terminal Public Pier Project. (Resolution No. 02-43)

ACTION: Commissioner Lee moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-43 was adopted.

5. ADMINISTRATIVE SERVICES

- A. Request for a supplemental appropriation to authorize expenditure of funds received from the developer for Port costs associated with the negotiations of the Disposition and Development Agreement and related documents for the James R. Herman International Cruise Terminal and Mixed Use Development Project. (Resolution No. 02-42)

Mr. Joel Robinson, Director of Administrative Services, presented the item and requested Commission's approval.

ACTION: Commissioner Lee moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor; Resolution No. 02-42 was adopted.

- B. Request for authorization to issue Request for Proposals for professional services to assist the Port to prepare an analysis of the balance of payments and services between the Port and City general fund departments. (Resolution No. 02-44)

Mr. Joel Robinson, Director of Administrative Services, presented the item and requested Commission's approval.

Commissioner McCarthy inquired about the cost of the contract and requested that a copy of the RFP is provided to the Commission before it is released to the public. Mr. Robinson replied that staff does not have a cost estimate at this time but staff will definitely provide the Commission a copy of the RFP before it is released to the public.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-44 was adopted.

6. FACILITIES & MAINTENANCE

- A. Request for authorization to award Construction Contract No. 2672, Pier 70 Wharf 5 Demolition Project, to Zaccor Companies Inc. (Resolution No. 02-45)

Mr. Ken Chu, Project Engineer, presented the item and requested Commission's approval.

Commissioner Brandon asked about the MBE/WBE goals for the contract. Mr. Chu replied that the subcontracting goal for MBE is 9% and the WBE is 5%. Zaccor met both requirements. Commissioner Brandon asked if Zaccor has previously worked with the Port and if so, was the contract within the budget. Mr. Chu replied that Zaccor worked on the Pier 34 demolition project and the contract was indeed on budget.

Commissioner Brandon was concerned about the huge discrepancy of bids from the highest to the lowest bidders. Chief Harbor Engineer Nita Mizushima concurred that there is a wide gap in the demolition bid prices for this contract as well as the Pier 34 demolition project.

Zaccor specializes in this type of work and it is subject to their availability. The Port is benefiting from their availability and their efficiency to do this specialized type of work. The Pier 34 demolition project was successful. Their bid price was substantially below the engineer's estimate but they were within the budget.

Commissioner Brandon asked about the quarterly status report that used to be provided to the Commission regarding contracting and MBE/WBE breakdown. Mr. Alex Lee replied that he will contact the Port's Human Resources and the Human Rights Commission about the status of the quarterly report.

Commissioner McCarthy was also concerned about the huge range of the bids. She asked if staff is confident that the contract will be on budget and on time. Ms. Mizushima replied to the affirmative.

ACTION: Commissioner Lee moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 02-45 was adopted.

B. Request for authorization to advertise for competitive bids for the construction of the Downtown Ferry Terminal Public Pier. (Resolution No. 02-46)

Ms. Mojgan Yousefkhani, Project Engineer, presented the item and requested Commission's approval.

Commissioner McCarthy asked if the Port will receive credit from BCDC for this public access project. Ms. Mizushima replied that this project is part of the whole BCDC permit process for the Ferry Building/Ferry Terminal projects. The Port was obligated to do this project as funds became available.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-46 was adopted.

7. REAL ESTATE

A. Request for approval of assignment of Lease No. L-7495 affecting property known as 160 Jefferson Street on Seawall Lot 3010 from Alioto Fish Company, Ltd. to Boudin Properties, Inc. (Resolution No. 02-47)

Mr. Nic Dempsey, Property Manager, presented the item and requested Commission's approval.

Commissioner Brandon asked if the two licenses were included in the lease. Mr. Dempsey replied that they were not. They are separate documents that have been negotiated and will be executed by the Port and Boudin but are not subject to this assignment agreement. They are brand new documents consistent with the Port's pre-existing leasing policy.

Commissioner Brandon asked if the two licenses are being brought up to market. Mr. Dempsey replied that the licenses reflect market value as shown in the staff report. The original assignment and assumption agreement that is attached to the staff report shows a

continuing obligation by the assignor. The resolution does not and the resolution is the correct document.

Commissioner Brandon indicated that when the Port generally assigns properties, the Guarantor usually remains on the lease. Mr. Dempsey replied that in some instances, the Guarantor is kept on the lease and in some instances, they're not. In the original lease, the Olivera family transferred it to Alioto Company, the Port then released the Olivera family. Staff feels that the financial security offered by Boudin is sufficient enough to release Alioto Fish Company from continuing liability. It was and it is a condition of their inter-party assignment agreement.

Lou Giraudo, Boudin Bakeries, indicated that they are delighted to bring Boudin Bakery back to San Francisco ownership, in particular to their family. He thanked the Commission for their support.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-47 was adopted.

B. Request for approval of Lease No. L-13243 with Butler Enterprise Group, L.L.C. for the development and operation of a restaurant at 601 Cesar Chavez Street.

Mr. Phil Williamson, Property Manager, presented the item and requested Commission's approval.

Commissioner McWilliams inquired about the status of the card check in the lease agreement. Mr. Williamson replied that the lease agreement requires that the tenant obtains the appropriate agreements with the local service union. It is a standard language from other Port leases for this type of operation.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution No. 02-48 was adopted.

8. NEW BUSINESS/PUBLIC COMMENT

Commissioner Hardeman requested Mr. O'Neill to look into getting the US Navy Blue Angels fly over for the Giants games this weekend. Mr. O'Neill replied that they were working on it.

9. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 4:50 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

- (1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 26
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*International Museum of Women: Elizabeth Colton
- b. Property: Pier 92
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Pacific Cement: Rick Ramirez
- c. Property: Pier 7
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Waterfront Restaurant: Al Falchi
- d. Property: SWL 301
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*S.P. Tarantino Insurance: Don Tarantino
- e. Property: Franciscan Parking Lot @ Pier 43-½
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Franciscan Restaurant: Kevin Westlye
- f. Property: Pier 45B
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Cohan Seafood Co., Inc.: Barry Cohan
- g. Property: Pier 17
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Oracle/BMW Racing: Eric Kennedy
- h. Property: 10 Lombard @ SWL 318
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Technologic Partners, Inc.: Richard Schaffer, Principal

- (2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTERS (Discussion and Action Items):

- a. Discuss existing litigation matters pursuant to subdivisions (a) and (d) of the California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(D) (2 cases).
 - Claimant Marguerite Kuckenbecker v. City and County of San Francisco, San Francisco Administrative Claim No. 02-03834, filed June 5, 2002.
Discussion and approval of proposed settlement of administrative claim seeking damages of \$30,740.00 as a result of water intrusion and property

damage in premises leased to the claimant. Proposed settlement for payment of \$24,740 in exchange for claimant's full release and dismissal of claims.

- Claimant National Railroad Passenger Corporation dba Amtrak v. City and County of San Francisco. San Francisco Administrative Claim No. 02-04198, filed December 24, 2001.

Discussion and approval of proposed settlement of administrative claim seeking damages of \$29,143.89 as a result of water intrusion and flooding in premises leased to the claimant. Proposed settlement for payment of \$29,143.89 in exchange for claimant's full release and dismissal of claims, excluding potential indemnity claim related to health-related injuries asserted by claimant's employees.

10. RECONVENE IN OPEN SESSION

At 7:00 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval of the proposed settlement of Administrative Claim No. 02-03834 of Marguerite Kuckenbecker on the following terms and conditions: Payment of \$24,740 in exchange for a full release and dismissal of claims. Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval of the proposed settlement of Administrative Claim No. 02-04198 of National Railroad Passenger Corporation dba Amtrak on the terms and conditions described in the agenda. Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to not disclose any other information discussed in executive session; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

11. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:09 p.m.



NOTICE OF CANCELLED MEETING

The following Regular Port Commission Meeting has been cancelled:

OCTOBER 22, 2002 @ 4 P.M.

A Special Port Commission Meeting is scheduled on:

OCTOBER 29, 2002 @ 4 P.M.

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**San Francisco Port Commission
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OCT 25 2002

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SPECIAL MEETING

4:00 P.M., TUESDAY, OCTOBER 29, 2002

BAYSIDE CONFERENCE ROOM

PIER 1, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public are posted on the Port's Website at www.sfport.com.

AGENDA

1. ROLL CALL

2. APPROVAL OF MINUTES - October 8, 2002 Regular Meeting

3. EXECUTIVE

A. Executive Director's Report

4. CONSENT

A. Request for approval to terminate Lease No. L-12899 with Technologic Partners, Inc. for offices at 10 Lombard, Suite 250, SWL 318. (Resolution No. 02-51) (Staff report provided to the Commission.)

B. Request for approval of lease assignment from Cohan Seafood Company to T & P Flannery Seafoods, Inc. (Resolution No. 02-52) (Staff report provided to the Commission.)

5. MARITIME

A. Request for approval of a 5-year Marine Terminal Agreement with SK Shipping at Pier 80. (Resolution No. 02-49) (Staff report provided to the Commission.)

6. REAL ESTATE

A. Request to enter into an agreement with the Franciscan Restaurant for the repair of the pier surface and substructure at Pier 43-½. (Resolution No. 02-53) (Staff report provided to the Commission.)

7. ENGINEERING & MAINTENANCE

- A. Informational presentation regarding planning and design of the "Living Classroom" at Heron's Head Park. (Staff report provided to the Commission.)
- B. Request for authorization to execute Third Amendment to Professional Services Contract with San Francisco Port Management Consultants for the Downtown Ferry Terminal Project. (Resolution No. 02-50) (Staff report provided to the Commission.)

8. PLANNING & DEVELOPMENT

- A. Authorization to apply for, accept and expend \$75,000 in grant funds from the Metropolitan Transportation Commission, Transportation for Livable Communities (TLC) Planning Grants Program, for preparation of the Fisherman's Wharf Area Plan. (Resolution No. 02-54) (Staff report provided to the Commission.)

9. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to all Commissioners for review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

10. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., S. F. Superior Court Case No. 318360, filed January 25, 2001.

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

a. Property: Pier 27-31

Person Negotiating: Port: Byron Rhett, Director of Planning & Development

*The Mills Corporation: Steven J. Jacobsen

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 27-31.

b. Property: Pier 27

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Bauer Limousines: Gary Bauer

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 27.

c. Property: 1500 Sansome Street

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*IN Radio: John Douglas

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at 1500 Sansome Street.

d. Property: Pier 45 Sheds B & D

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*Monterey Fish Company: Salvatore Tringali

*Peninsula Seafood of San Bruno, Inc. dba All Shores Seafood: Dan Strazzullo

*Seafood Wholesale: Minh Tran

*North Atlantic S.F. Inc.: Charlie Akwa

*Costarella Seafood: Bob Costarella

*La Rocca Seafood Inc.: Michael La Rocca

*T.J. Nevada LLC: Jimmy Fong

*Pezzolo Seafood: Ron Pezzolo

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 45 Sheds B & D.

e. Property: Pier 27

Person Negotiating: Port: Kenneth Winters, Director of Real Estate

*American Red Cross: Joseph Lund and Harold Brooks

Under Negotiation: ____ Price ____ Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 27.

- f. Property: Rincon Park
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*SF Redevelopment Agency: Amy Neches

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Rincon Park.

- g. Property: Pier 92
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Pacific Cement: Rick Ramirez

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 92.

11. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

12. ADJOURNMENT

OCTOBER/NOVEMBER/DECEMBER 2002
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
October 29 (<i>Special Meeting</i>)	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
November 12	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
December 10	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Fisherman's Wharf Environmental Quality Advisory Committee (EQAC) will be held on the fourth Wednesday of the month, at 9:00 a.m. at Scoma's Restaurant, Pier 47. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on the third Thursday, every other month at 11:30 a.m. in Bayside 1 @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:00 to 7:00 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 - 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking:

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Request to Terminate Lease No. L-12899 with Technologic Partners, Inc. for offices at 10 Lombard, Suite 250, SWL 318.

DIRECTOR'S RECOMMENDATION: TERMINATE LEASE NO. L-12899 AS OF March 1, 2002 IN ACCORDANCE WITH THE TERMS OF THE STIPULATION FOR ENTRY OF JUDGMENT AND RELEASE AND SETTLEMENT AGREEMENT.

BACKGROUND:

In April 2000 the Port and Technologic Partners, Inc., entered into Lease No. L-12899 for a 1,980 square foot office at 10 Lombard, Suite 250. The initial term for this lease was three years, 4/15/00 through 4/14/03, at a base rent of \$6,930.00 per month. The tenant's home office is in New York City. The business of their San Francisco office was event planning and organizing.

During 2001, the tenant temporarily closed the San Francisco office due to lack of business, but kept their rent current. On September 11, 2001, three Technologic Partners' employees were *en route* to San Francisco to re-open the office here. On the same day, however, many of Technologic Partners' employees were killed in the World Trade Center tragedy.

Due in part to this tragedy, Technologic Partners' business has had a serious decline. The additional overall decrease in air travel and the resulting economic downturn has eliminated much event business in the Bay Area. Technologic Partners has had neither the resources nor the business to justify re-opening its office at 10 Lombard. As a result, the firm vacated its offices in February 2002 and terminated its month-to-month storage license at that time. The Port has applied the tenant's security deposit to this account and pursued collection of the tenant's obligation.

This Print Covers Calendar Item No. 4A

PROPOSAL:

The City Attorney's office has obtained Technologic Partners' agreement to pay the sum of \$25,032.76 in twelve (12) monthly installments commencing October 10, 2002 of \$2,000 each with one final payment of \$3,032.76. This sum represents rent due up to the date they vacated the premises. In exchange, the Port will agree to terminate the lease effective March 1, 2002.

RECOMMENDATION:

Port staff recommends that the Port Commission approve termination of Lease No. L-12899 retroactive to March 1, 2002 upon execution of the Stipulation for Entry of Judgment and Release and Settlement Agreement as prepared by the City Attorney's Office under the terms discussed above.

Prepared by: Claudia Davison, Property Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-51

- WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, under Charter Section 3.581(g) leases granted and made by the Port should be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, on April 15, 2000 the Port entered into Lease No. L-12899 (the "Lease") with Technologic Partners, Inc affecting 1,980 square feet of office space at 10 Lombard, Suite 250, SWL 318; and
- WHEREAS, Technologic Partners has requested that they be relieved of further obligations under the terms of the Lease; and
- WHEREAS, Technologic Partners has agreed to enter into a Stipulation for Entry of Judgment and General Release and Settlement Agreement and pay past due rent in the amount of \$25,032.76; and
- WHEREAS, Port staff believes that the payment of the past due rent represents a reasonable settlement of this matter; now therefore, be it
- RESOLVED, that the San Francisco Port Commission hereby authorizes the Executive Director or his designee to terminate Lease No. L-12899 effective March 1, 2002 consistent with the business terms set forth in the memorandum to the San Francisco Port Commission for Agenda Item 4A for the Port Commission meeting of October 29, 2002.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 29, 2002.

Secretary



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas Wong *DW*
Executive Director

SUBJECT: Approval of lease Assignment from Cohan Seafoods Co., Inc. to T & P Flannery Seafoods, Inc.

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT OF COHAN SEAFOOD CO., INC.

Cohan Seafood, Inc. is the Tenant of the premises under Port Lease No. L-12528 (the "Lease") at Pier 45, Shed B-2 where it operates a fish processing business. The term of the ten (10) year Lease commenced on April 1, 1998. The premises consist of 10,653 square feet of shed space and 3,170 square feet of non-exclusive apron space. The current monthly rent for the total space is \$6,398.91 which equals \$0.46 per square foot. The use of the premises is for receiving, handling and processing fish and for commercial fishing and such uses as are reasonably related thereto.

Cohan Seafood, Inc. has recently sold its business operations to Terrance and Peter Flannery ("T & P Flannery Seafoods, Inc."). As part of the business transaction, Cohan Seafood, Inc. desires to assign the Lease to Terrance and Peter Flannery, dba ("T & P Flannery Seafoods, Inc.")

Terrance and Peter Flannery have an excellent credit history and extensive experience in the food industry as the owners of Bryan's Quality Meats and Laurel Super at 3445 California Street and are prepared to fully assume Cohan Seafood Co., Inc.'s obligations under the Lease. There are no unpaid rents that are currently due from Cohan Seafood Co., Inc.

Base on the above, staff recommends the approval of the proposed lease assignment to Terrance and Peter Flannery ("T & P Flannery Seafoods, Inc.") on the terms and conditions set forth in the assignment and assumption agreement on file with the Commission Secretary.

Prepared by: Elliott Riley, Senior Property Manager

This Print Covers Calendar Item No. **4B**

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-52

WHEREAS, Charter Section 3.581 grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Under Charter Section 3.581 (g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, The Port owns the property located at Pier 45 Shed B-2 ("Shed B"); and

WHEREAS, The Port leased to Cohan Seafood Co., Inc. ("Cohan Seafood") space in Shed B for use in commercial fishing and fish processing operations pursuant to Port Lease No. L-12528, a ten-year lease commencing on April 1, 1998 (the "Lease"); and

WHEREAS, Cohan Seafood recently sold its business operations to T & P Flannery Seafoods, Inc. (Terrance and Peter Flannery); and

WHEREAS, Cohan Seafood desires to assign to Terrance and Peter Flannery and Terrance and Peter Flannery desire to assume from Cohan Seafood, Cohan Seafood's right, title and interest in the Lease; and

WHEREAS, The Lease requires the Port Commission to consent by resolution to any assignment of the Lease; and

WHEREAS, Staff recommends that the Port Commission consent to the assignment and assumption of the Lease by Cohan Seafood Co., Inc. and T & P Flannery Seafoods, Inc., respectively, in the form of the assignment and assumption agreement on file with the Commission Secretary (the "Assignment Agreement");
NOW THEREFORE, BE IT

RESOLVED, Based on staff's recommendation and its own analysis, the Port Commission hereby consents to the assignment and assumption of the Lease by Cohan Seafood, Co. Inc. and T & P Flannery Seafoods, Inc. respectively and authorizes the Executive Director, or his designee, to execute the Assignment Agreement with Cohan Seafood Co., Inc. and T & P Flannery Seafoods, Inc., in a form approved by the City Attorney's office.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 29, 2002.

Secretary



MEMORANDUM

October 21, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas Wong *DW*
Executive Director

SUBJECT: APPROVAL OF THE SK SHIPPING 5-YEAR MARINE TERMINAL AGREEMENT

DIRECTOR'S RECOMMENDATION: APPROVE THE 5-YEAR MARINE TERMINAL AGREEMENT WITH SK SHIPPING AT PIER 80.

The Port has concluded negotiations for a five-year Marine Terminal Agreement with SK Shipping for use of Pier 80. SK Shipping's service, carrying breakbulk steel and other cargoes, will call San Francisco from Asia once a month. The agreement includes the following terms:

Material provisions of the agreement include the following: (i) five year term, commencing October 15, 2002 with the ability of either party to terminate as of each October 14; (ii) reduced wharfage and dockage rates based on an annual Volume Incentive Program; and (iii) nomination of Pier 80 as their regular published Bay Area port of call.

The Volume Incentive Plan for wharfage is a tiered discount based on tonnage shipped during the contract year and is structured as follows:

25,000 to 50,000 MT	5% discount off tariff
50,001 to 75,000 MT	6% discount off tariff
75,001 to 100,000 MT	7% discount off tariff
100,001 MT and up	10% discount off tariff

Dockage discounts are also on a tiered discount starting with a 10% discount for 0 to 6 vessels, ending with a 50% discounts for vessel calls 21 and over.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

MEMBERS, PORT COMMISSION

Page 2

If Marine Terminals Corp. ceases operations at Pier 80, the Agreement also allows termination by Port if they are unable to reach agreement with a new management contractor.

The agreement contains the Port's standard indemnity provisions, whereby SK Shipping Co., as the "Carrier" agrees to indemnify the Port for losses arising from its activities. SK Shipping has requested a change to this language in Section 7.05 a) and b), stating that "if the status of SK Shipping Co. Ltd. is a time charterer, SK Shipping Co. Ltd. shall not be included in the category of the definition "Carrier". This means that if SK Shipping is only leasing space on a vessel owned and operated by another company, SK Shipping is not responsible for indemnifying the Port for damage caused by that other vessel. Port staff recommends that the Port Commission approve the agreement with this change.

Annual revenue for the SK Shipping agreement is estimated at a minimum of \$100,000 from wharfage and dockage. As SK Shipping vessels have their own cranes, crane rental will be minimal.

A copy of the agreement is attached hereto.

Prepared by: Jill Simpson, Maritime Marketing Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-49

- WHEREAS, SK Shipping desires to enter into a Marine Terminal Agreement with the Port, for use of Port's marine terminal facilities; and
- WHEREAS, said Agreement grants SK Shipping a Volume Incentive Program offering reduced dockage and wharfage charges for the utilization of Pier 80 as their regularly scheduled Northern California port of call; and
- RESOLVED, that the San Francisco Port Commission approves the Marine Terminal Agreement SK Shipping in substantially the form of which is on file with the Secretary of the Port Commission for this agenda item; and be it further
- RESOLVED, that the Port Commission authorizes the Executive Director (i) to enter into the Agreement, (ii) to make any necessary refinements to the Agreement as are approved by the City Attorney; (iii) to file the Agreement with the Federal Maritime Commission; and (iv) to take all such further actions as are necessary to put the Agreement into effect.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 29, 2002.

Secretary

CITY AND COUNTY OF SAN FRANCISCO

Willie L. Brown, Jr., Mayor

MARINE TERMINAL AGREEMENT

BETWEEN

SK Shipping

AND

THE CITY AND COUNTY OF SAN FRANCISCO,

A MUNICIPAL CORPORATION, ACTING BY AND THROUGH

THE SAN FRANCISCO PORT COMMISSION

DATED

October 15, 2002

SAN FRANCISCO PORT COMMISSION

MIKE HARDEMAN, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
BRIAN McWILLIAMS, COMMISSIONER
PIUS LEE, COMMISSIONER
DENISE McCARTHY, COMMISSIONER

DOUGLAS WONG
EXECUTIVE DIRECTOR



MARINE TERMINAL AGREEMENT

This non-exclusive Marine Terminal Agreement ("Agreement") is entered into as of this first day of October 15, 2002 by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Port Commission ("Port") and SK Shipping Co. Ltd., a Korean Corporation ("Carrier")

WITNESSETH:

WHEREAS, City owns certain property located in the City and County of San Francisco pursuant to an act of the legislature of the State of California commonly known as the "Burton Act" (Statutes 1968, Chapter 1333); and

WHEREAS, Pursuant to the Burton Act and the City's Charter, Port exercises jurisdiction and control over said property; and

WHEREAS, Carrier wishes to use a portion of said property which has been improved with a marine terminal for the purpose of moving waterborne cargo through the Port; and

WHEREAS, Port desires to have Carrier use the property for said uses, with said uses being consistent with the public trusts upon which the property is held;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Port and Carrier agree as follows:

ARTICLE I. CARRIER'S TERMINAL RIGHTS

Section 1.01 Right to Use Facilities

Carrier shall have a non-exclusive right to use the Port's marine terminal at Pier 80, located at the Port of San Francisco in the City and County of San Francisco (the "Facilities") for the purposes set forth in Article III of this Agreement.

Section 1.02 Right to Transfer

If during the Term Port decides to move the location of its marine terminal to another location on Port property, Port shall give Carrier sixty (60) days prior written notice ("60-day Notice") of its decision. Carrier shall notify Port within thirty (30) days after receipt of Port's 60-day Notice, stating its decision to move to such alternative location, or its intent to terminate this Agreement. If Carrier decides to move to the alternate location, such transfer shall be embodied in an amendment to this Agreement, which shall not be effective until filed with the Federal

Maritime Commission. If Carrier decides to terminate the Agreement, such termination shall be effective upon the sixtieth (60th) day after Port's 60-day Notice.

ARTICLE II. TERM

Section 2.01 Commencement of Term

The term of this Agreement shall commence on the first day of the month immediately following the occurrence of all of the following events (the "Commencement Date"):

- (a) The filing of this Agreement with the Federal Maritime Commission, and
- (b) Approval of this Agreement by the San Francisco Port Commission.

Port will notify Carrier of the Commencement Date in writing when all of the approvals set forth above have been obtained, however failure to do so shall not affect the validity of this Agreement. Notwithstanding the foregoing, Carrier shall have a right of early entry to use the Facilities for the permitted uses hereunder and prior to the Commencement Date on all of the other terms and conditions hereof upon the prior consent of the Port's Executive Director or his designee.

Section 2.02 Term

This Agreement shall remain effective for five (5) years from the Commencement Date, unless terminated earlier as provided for herein.

ARTICLE III. USE OF THE FACILITIES

Section 3.01 Permitted Uses

Carrier shall use the Facilities as its regularly scheduled Northern California port of call for its service between the U.S. West Coast and Asia for the berthing of Carrier's vessels and the loading and discharging of cargoes therefrom and operations ancillary thereto, and for no other purposes.

ARTICLE IV. COMPENSATION

Section 4.01 When Tariff Provisions Apply

Except as expressly set forth in Section 4.02 below, the provisions of San Francisco Port Commission Tariff No. 4, publishing rules and regulations and rates and charges for wharfinger services at property used as marine terminals at the Port of San Francisco, and amendments and subsequent reissues thereof (collectively, "Tariff"), shall apply to Carrier's use of the Facilities pursuant to this Agreement. Carrier agrees to be bound by and comply with the provisions of the

Tariff.

Section 4.02 Fees for Use

As consideration to Carrier for the use of the Facilities as Carrier's regularly scheduled Bay Area port of call for breakbulk cargo, the following provisions shall govern the amount of dockage and wharfage due to Port from Carrier as a result of Carrier's use of the Facilities.

(a) Dockage:

Dockage -

0 to 6 vessel calls per year	10% discount off of Tariff rates
7 to 11 vessel calls per year	20% discount off of Tariff rates
12 to 16 vessel calls per year	30% discount off of Tariff rates
16 to 20 vessel calls per year	40% discount off of Tariff rates
21 and up vessel calls per year	50% discount off of Tariff rates

(b) Wharfage:

Wharfage shall be paid by Carrier according to the following schedule, based on annual throughput volume per twelve-month Contract Year (as hereinafter defined) of this Agreement:

VOLUME INCENTIVE PROGRAM:

All tonnage arriving into the Facilities on Carrier's vessels will be used in consideration for the volume Incentive Program ("VIP") described below, however VIP discounts will not apply to F.I.O. cargo (free in and out where Carrier is not responsible for the payment of wharfage or dockage) Carrier shall be entitled to a variable discount on wharfage payable hereunder in accordance with the following schedule, depending upon the amount of metric tons arriving at the Facility on Carrier's vessels. VIP Program volumes apply per contract year:

25,000 to 50,000 MT	5% discount off tariff
50,001 to 75,000 MT	6% discount off tariff
75,001 to 100,000 MT	7% discount off tariff
100,001 MT and up	10% discount off tariff

- (c) Free Time: Thirty (30) days free time exclusive of Saturdays, Sundays and holidays will be granted to all Carrier's cargo arriving on the terminal at the Facilities.

For the purposes of this section, a "Contract Year" shall commence on each October 15 and shall end on October 14 of the following year. Notwithstanding the Commencement Date, the first Contract Year of this Agreement shall be from October 15, 2002 to October 14, 2003.

Section 4.03 Rate Adjustments

Rates stated in Section 4.02 will be subject to adjustment at the same percentage and at

the same time as those authorized by the California Association of Port Authorities for the Port's Tariff No. 4.

Section 4.04 Calculation of Initial Fees

Within ninety (90) days after the Commencement Date, Port and Carrier shall mutually determine the fees due the Port under Section 4.02 above, calculated as if this Agreement had commenced on August 1, 2002. Any amount that Carrier paid Port that exceeds the amount that would have been charged under the preceding sentence will be refunded to Carrier after the Commencement Date.

ARTICLE V. MANAGEMENT OF FACILITIES

Section 5.01 Management Agreement

Carrier acknowledges and agrees that as of the Commencement Date, the responsibility of managing the Facilities has been assigned by Port to Marine Terminals Corp. (MTC) pursuant to that certain Management Agreement between MTC ("Management Contractor") and Port dated December 1997.

ARTICLE VI. TERMINATION

Section 6.01 Termination by Governmental Action

In the event the United States of America or the State of California, or any other governmental authority, shall, by condemnation or otherwise, take title, possession or the right to possession of the Facilities, or any part thereof, Port may, at its option, and, if the taking has substantially impaired Carrier's use of the Facilities, Carrier may, at its option, terminate this Agreement as of the date of such taking, and all further obligations of the parties shall end, except as to liabilities which shall have accrued prior to the date of taking.

Section 6.02 Termination by Judicial Action

In the event any court having jurisdiction over the subject matter of this Agreement shall render a decision which has become final and which will prevent the performance by Carrier or Port of their obligations hereunder, then either party may terminate this Agreement upon thirty (30) days written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate.

Section 6.03 Right of Termination

Carrier shall have the right to terminate this Agreement without penalty effective on October 14, 2003 and on each October 14th thereafter throughout the Term (each "Termination Date"). Carrier must exercise such termination right by delivering written notice of termination to Port at least sixty (60) days prior to the applicable Termination Date upon which Carrier desires

to terminate. In the event Carrier fails to give timely notice, Carrier may not terminate this agreement until the following Termination Date with proper notice as set forth herein.

Section 6.04 Termination by Resignation of Terminal Contractor

In the event Management Contractor, as defined in Section 5.01, gives Port notice of its intention to cease operations at the Port, Port shall notify Carrier of such notice within ten (10) days. Port shall make its best effort to negotiate an agreement with a new management contractor.

In the event Port is unable to successfully conclude such an agreement within sixty (60) days after receiving such notice from Management Contractor, the Port may, at its option, terminate this Agreement upon ninety (90) days prior written notice to Carrier, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrue prior to the effective date of termination) shall thereupon terminate.

ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 7.01 Taxes

A possessory interest subject to property taxation may be created by this Agreement, and Carrier will be responsible for the payment of property taxes levied on such possessory interest.

Carrier agrees to provide all information requested by Port for tax purposes, including but not limited to the information described in California Revenue and Taxation Code Section 480.5.

Section 7.02 Books and Records

Carrier shall keep full and accurate books, records and accounts relating to all its operations upon the Facilities, including without limitation, the tonnage of revenue cargo handled, vessel occupancy of the berths and cargoes handled. Port shall have the right and privilege through its representatives and at all reasonable times to inspect such books, records and accounts.

If such books, records and accounts are not kept and maintained within a 25-mile radius of the City and County of San Francisco, Carrier shall make such books, records and accounts available for inspection within said 25-mile radius.

Section 7.03 Nondiscrimination

In the performance of this Agreement, Carrier covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Carrier, in any of Carrier's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Carrier. The provisions of Chapter 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City

and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Carrier agrees to comply with all provisions of Chapter 12C of the San Francisco Administrative Code which apply to Carrier's use of the Facilities pursuant to this Agreement.

Section 7.04 Hazardous Materials, Etc.

In addition to provisions in the Tariff governing discharge of oil upon navigable waters (Item 113) and explosives and other hazardous and dangerous cargo (Item 117), Carrier will comply with the labeling, packaging, storage and documentation requirements for hazardous materials contained in Title 49, Code of Federal Regulations Parts 100-195, United States Department of Transportation Regulations and the marine pollution regulations contained in Title 33, Code of Federal Regulations Parts 151-157, Navigation and Navigable Waters. The references to certain laws and regulations set forth above shall apply to any modification, re-issues or amendments to said laws or regulations. In addition, Carrier will report immediately all accidents involving spills of corrosives, explosives or other flammable or dangerous cargoes to the appropriate federal, state, local and Port authorities. As used in this Agreement, "hazardous materials" shall mean any substance, waste or material which has been determined by any state, federal or local government authority to be a hazardous or toxic substance or material including without limitation, any hazardous substance as defined in Section 101 (14) of CERCLA (42 USC Section 9601 (14)) or Section 25281 or 25316 of the California Health and Safety Code, and any hazardous material as defined in Section 25501 of the California Health and Safety Code, and any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority. If the presence of any hazardous material on the Facilities caused or permitted by Carrier results in any contamination of the Facilities, Carrier, at its sole expense, shall promptly take all action that is necessary to return the Facilities to the condition existing prior to the introduction of such hazardous material onto the Facilities; provided that Port approval of such actions shall first be obtained, which approval shall not unreasonably withheld as long as such actions could not potentially have any material adverse effect upon the Facilities. Carrier's obligations hereunder shall survive the termination of this Agreement.

Section 7.05 Exculpation and Indemnity

(a) Exculpation. Except as otherwise provided in this agreement, Carrier, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against the City and Port, and their officers, agents and employees, and agrees to hold Port and City and their officers, agents and employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Facility for any cause arising at any time, including all claims arising from the joint or concurrent negligence of Port or City, where the Carrier's negligence, willful misconduct or reckless is the sole cause of the claim, or, to the extent that Carrier's negligence has contributed to the cause of the claim in the proportion of that contributory negligence thereof. The Port and City shall be responsible and shall indemnify the Carrier from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said

Facility for any cause arising at any time, where the negligence, willful misconduct or reckless of the Port and City is the sole cause of the claim or, to the extent that negligence of the Port and City has contributed to the cause of the claim in the proportion of that contributory negligence thereof.

(b) General Indemnity. Carrier agrees to indemnify, hold harmless and defend, the City and Port and their officers, agents and employees, against any and all claims, judgments, losses, costs, damages, penalties, fines or liabilities of whatever kind (collectively "Claims") arising in any manner out of any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Facilities, or any part thereof, whether to the person or property of Carrier, its employees, agents, consultants, contractors, or subcontractors (collectively "Agents"), or third persons, resulting from (i) any use or activity of Carrier or its Agents under this Agreement, (ii) any failure by Carrier to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, or (iii) the use of the Facilities or any activities conducted thereon under this Agreement by Carrier or its Agents; except only to the extent of Claims resulting directly from the negligence, contributory negligence (to the extent of the contribution), recklessness or willful misconduct of the City or Port or the authorized representatives of the City or Port. If the status of SK Shipping Co. Ltd. is a time charterer, SK Shipping Co. Ltd. shall not be included in the category of the definition "Carrier".

(c) Toxics Indemnity. Carrier agrees to indemnify, hold harmless and defend the City and Port and their officers, agents and employees, from and against any and all claims, demands, actions, causes of actions or suit (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, diminution in value of the facilities, engineering consultant and attorneys fees of every kind, nature and description, (collectively "Toxics Claims") resulting from any Release of a Hazardous Material caused by or allowed by Carrier or its agents whether or not the Hazardous Materials at the Facilities were present prior to execution of this Agreement; (ii) any requirement of a regulatory agency for investigation or remediation of any Hazardous Materials at the Facilities arising out of or in connection with the activities under this Agreement; or (iii) any breach of or failure to duly perform or observe any term, covenant or agreement in this Agreement to be performed or observed by Carrier, including but not limited to, any violation of any Environmental Law; except only to the extent of Toxic Claims resulting directly from the negligence, contributory negligence (to the extent of the contribution), or willful misconduct of City or Port or the authorized representative of the City or Port. "Environmental Laws" means present or future any federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area, including, without limitation, soil, air, bay water and groundwater conditions. If the status of SK Shipping Co. Ltd. is a time charterer, SK Shipping Co. Ltd. shall not be included in the category of the definition "Carrier".

(d) The indemnity obligations in paragraph 7.05 (b) and (c) shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by the indemnified party from the first notice that any Claim or Toxics Claim is or may be made. The provisions of this paragraph shall survive termination of this Agreement.

(e) Port and City agree to indemnify, defend and hold Carrier, its vessels, owners or agents harmless from and against any and all losses, expenses, claims, actions or

liabilities to the extent the same is caused by the negligence, contributory negligence (to the extent of the contribution) or willful misconduct of Port or City.

(f) In addition to Carrier's obligation to indemnify and hold harmless the City and Port, Carrier specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and Port from any Claim or Toxics Claim which actually or potentially falls within the indemnification provisions of paragraph 7(b) or 7(c), even if the allegations are or may be groundless, false or fraudulent. Carrier's obligations to defend shall arise at the time such Claim or Toxics Claim is tendered to Permittee by City or Port and shall continue at all times thereafter.

(I) In the event a third party commences any proceeding for which a party intends to claim indemnification, such party shall promptly notify the other party in writing and allow equitable participation in all stages of the proceeding and settlement thereof. Failure to promptly notify or allow equitable participation by the other party shall reduce the right of indemnification by the extent of actual prejudice.

Section 7.06 Compliance with Laws.

Carrier, at Carrier's expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Carrier's use of the Facilities in effect either at the Commencement Date or at any time during the term.

Section 7.07 Notices

Any notice, demand or request provided for or permitted to be given pursuant to this Agreement must be in writing and shall be given or served by personal delivery or sent prepaid by either: (a) first-class mail; (b) certified mail with return receipt requested; or (c) overnight delivery service.

Notices shall be addressed as follows:

To Port: Executive Director
 Port of San Francisco
 Pier 1
 San Francisco, CA 94111

To Carrier: Philip Brotherton
 SK Shipping
 1200 N.W. Naito Pkwy, Ste. 390
 Portland, OR

Section 7.08 Waiver.

No waiver by either party at any time of any of the terms, conditions, covenants or provisions of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or provisions herein contained nor of the strict and prompt performance thereof by the party obligated to perform.

Section 7.09 Applicable Law

This Agreement shall be governed by the laws of the State of California.

Section 7.10 Severability

Should any of the covenants, terms, conditions or provisions set forth in this Agreement be held by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 7.11 Amendments

Neither this Agreement nor any of the terms or conditions hereof may be amended, modified or waived, except by an instrument in writing signed by both Carrier and Port and filed with the Federal Maritime Commission.

Section 7.12 Assignment

Carrier may not assign, convey, encumber, or otherwise transfer (collectively "Transfer") this Agreement without the prior written consent of Port, not to be unreasonably withheld. Notwithstanding the foregoing, the term "Transfer" shall not include any partnership, corporation or other entity which controls, is controlled by, or is under common control with Carrier or Carrier's parent (control being defined for such purposes as ownership of at least 50% of the equity interests in, or the power to direct the management of, the relevant entity) or to any partnership, corporation or other entity resulting from a merger or consolidation with Carrier or Carrier's parent, or to any person or entity which acquires substantially all the assets of Carrier as a going concern (collectively, an "Affiliate"), provided that (i) Port receives prior written notice of an assignment, (ii) the Affiliate has proven experience in the operation of the uses contemplated by this Agreement, (iii) the Affiliate remains an Affiliate for the duration of the balance of the term in the event of an assignment, (iv) the Affiliate assumes (in the event of an assignment) in writing all of Carrier's obligations under this Agreement, and (v) Port receives a fully executed copy of an assignment agreement between Carrier and the Affiliate.

Section 7.13 Successors

Subject to the provisions of Section 7.12 above, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Port and Carrier.

Section 7.14 MacBride Principles-Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Section 7.15 Tropical Hardwood Ban.

The City and County of San Francisco urges Carrier not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product or virgin redwood or virgin redwood product.

Section 7.16 Tobacco Products Advertising Ban. Carrier acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

7.17 Representations and Warranties. Tenant represents and warrants that it is a corporation duly organized and validly existing under the laws of the Korea, and that it has the requisite power and authority to own its property and conduct its business as presently conducted and as required under the terms of this Agreement. Tenant has the requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement. Tenant represents and warrants that it is authorized to conduct business in California through its agent, Transmarine Navigation Corporation. By acknowledging where indicated below, Transmarine Navigation Corporation represents and warrants that it is authorized to, and shall accept, service of process on behalf of Carrier in accordance with the laws of California.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

PORT

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting
by and through the SAN FRANCISCO
PORT COMMISSION

By: _____
Name: Douglas Wong
Title: Executive Director

Date Executed: _____

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: _____
Deputy City Attorney

PORT COMMISSION RESOLUTION

No.

By: _____
Secretary
PORT COMMISSION

FMC No. _____

CARRIER:

SK Shipping

By: _____
Name:
Title:

Date Executed: _____

As to Paragraph 7.17 only:

Transmarine Navigation Corporation, a
_____ corporation

By: _____
Its:

I have read and understood paragraph 7.14 the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Request to Enter Into an Agreement with The Franciscan Restaurant for the Repair of the Pier Surface and Substructure at Pier 43 ½ (Lease No. L-7593).

DIRECTOR'S RECOMMENDATION: AUTHORIZE ENTERING INTO AN AGREEMENT WITH THE FRANCISCAN RESTAURANT FOR THE REPAIR OF THE PIER SURFACE AND SUBSTRUCTURE AT PIER 43 ½.

HISTORY

The Franciscan Restaurant ("Franciscan") leases 72,254 square feet of Pier 43½ for a parking lot serving the patrons of the restaurant as well as other Fisherman's Wharf tenants and patrons. The Lease was entered into in 1971 and has an original term of 66 years. The Lease provides for a minimum rent of \$96,069.60 versus a percentage rent equal to 65% of gross receipts less applicable taxes. Before September 11, 2001, rent to the Port averaged approximately \$400,000 per year, including percentage rent.

The original Lease requires the tenant to maintain the pier structure and substructure. The Lease provides that in the event rebuilding the substructure and decking of the pier becomes necessary during the term of the Lease, the Port will credit against percentage rental 65% of the actual and reasonable costs of such rebuilding. Therefore, Franciscan is responsible for 35% of actual and reasonable costs of rebuilding. However, the Lease also provides that the Franciscan has the right to determine, at the time rebuilding the pier becomes necessary, whether the cost to do so will render the use of the leased premises uneconomical. If Franciscan determines that it would be uneconomical to proceed, Franciscan has the right to terminate the Lease with no further rights or obligations to the Port.

THIS PRINT COVERS CALENDAR ITEM NO. 6A

In December 2000, Franciscan, at the direction and with the understanding of the Port, retained an engineering firm to survey five depressed areas of Pier 43 ½ that had been observed by the Port Engineering staff. That survey was completed in March 2001. A second survey was completed at the end of April 2001. In May 2001, the five depressed areas were fenced off. In the Spring of 2002, during a routine inspection, the Port found that a portion of the parking lot was in danger of imminent collapse and worked with the Franciscan to close the unsafe portions of the lot. An engineering survey of the entire pier commissioned by Franciscan on May 28, 2002 revealed extensive deterioration of the substructure and deck surface. It is critical that the repairs proceed as soon as possible to minimize further damage to the substructure.

Franciscan's engineers estimate that the cost of repairs to the pier substructure and deck surface could be approximately \$1.3 million. Port Maintenance and Engineering staff concur with this number.

Under the terms of the Lease, the Port has no obligation to maintain the substructure of the leased premises or any part thereof. Franciscan is solely responsible for all maintenance and repairs excepting only the responsibility to repair damage caused by fire, acts of war, acts of God or any other cause other than wear and tear. In the event of damage to the substructure or the surface improvements caused by ordinary wear and tear, Franciscan "...shall promptly undertake such maintenance and repair and complete the same with due diligence".

PROPOSAL

Under the existing lease terms, should Franciscan undertake these repairs, Franciscan would be entitled to a rent credit against its monthly Percentage Rent obligations equal to 65% of its cost of the estimated \$1.3 million, plus financing, to rebuild the premises. Anticipating a 7% cost of funds, this would amount to a total Percentage Rent credit allowable per the lease to Franciscan of approximately \$978,700 of which \$133,708 represents the cost of funds. The funds in excess of this amount would have to be absorbed by Franciscan. This would result in Franciscan funding an additional \$527,000 without reimbursement by the Port via Percentage Rent or other credits. Franciscan is of the opinion that such "funding" without recapture would render the continued operation of the parking facility uneconomic.

Franciscan is prepared to immediately undertake the urgently needed repairs to the parking lot and to obtain the construction financing necessary to do so, only if 100% of its costs, up to a maximum of \$1.3 million, in addition to actual costs of financing (not to exceed a 7% rate), are offset against 100% of Franciscan's percentage rent obligation under the Lease. The total estimated cost to the Port per this scenario rent credits is estimated at \$1,505,700, which includes costs of financing. Approximately \$527,000 of this total cost, or 35%, is incremental to the Port's current obligations under the Lease Prior to September 11, 2001, Franciscan's percentage rent payments to the Port exceeded \$400,000 annually. Given the past level of performance, the Port could conservatively expect to fully amortize these repair costs within a three to five year period following repair completion if it agreed to cover the entire repair cost requested by the Franciscan.

Franciscan is working with the Port Real Estate and Engineering staff to determine the full extent of the repairs needed to repair the Pier 43½ substructure and to replace portions of the decking

on the surface of the pier. The Port and Franciscan agree that the cost to undertake the needed repairs is estimated to be no greater than \$1.3 million. It is possible that the costs may be less than this amount, subject to possible cost savings to be effected by value engineering.

The estimated project cost of \$1.3 million includes the option of the use of the Port's creosote piles to be wrapped by the Franciscan. The proposed agreement acknowledges that the Port will make a good faith effort to provide creosote piles currently in its inventory, should they be deemed suitable for use in the substructure repairs. These piles would be provided at no expense to Franciscan other than the cost to move them from the Port location at Pier 90-92 to Pier 43 ½. However, because pile wrapping is labor-intensive and time consuming, Franciscan is also investigating the possibility of purchasing treated wood piles pre-coated to minimize the labor cost and scheduling impacts of wrapping the piles.

Franciscan and Port Real Estate staff have negotiated the terms of an Agreement, a copy of which is on file with the Commission Secretary. The Agreement contains the following terms and conditions:

1. Franciscan agrees to immediately undertake all needed repairs to the Pier 43 ½ substructure and deck surface area.
2. Both Franciscan and the Port will approve the "scope of work" for the repairs.
3. Franciscan will be granted a rent credit equal to actual reasonable costs to undertake the repairs, including engineering, design and legal fees incurred to date in the amount of \$101,300, and construction costs (labor, materials, engineering coordination based on bids received not to exceed \$1.3 million, plus interest expenses actually incurred at an annual rate of seven percent (7%).
4. The rent credit will be applied against one hundred percent (100%) of Franciscan's monthly Percentage Rent obligation until such time as the rent credits taken equal the Cost of Work, plus interest at an annual rate of seven percent (7%) (Monthly Rate .58334%).
5. The rent credit will be applied only to Franciscan's Percentage Rent obligations under the terms of the Lease. There will be no reduction in Base Rent.
6. Franciscan will obtain all required permits and approvals for the repairs including needed Bay Conservation and Development Commission (BCDC) permits.
7. If BCDC and other regulating bodies permit the use of creosote piles for the substructure repairs, the Port shall make available to Franciscan its entire inventory of suitable creosote piles at no cost to Franciscan except the cost to transport the piles to Pier 43 ½.
8. The Port will waive all building permit and inspection fees.
9. The parties will release each other from any claims related to the condition of the Premises, known or unknown, up to the effective date of the Agreement.

10. Franciscan has agreed to continue to cooperate with the Port and BCDC in the BCDC/Port planning process for Fisherman's Wharf and in the implementation of the final plan.

ANALYSIS

The proposal envisions a maximum cost of \$1.3 million, in addition to financing costs.. Under the original Lease, the Port is obligated to reimburse through rent credits 65% of the cost of rebuilding the pier substructure and deck surface equivalent to \$845,000 under the current repair scenario. By agreeing to increase its reimbursement to 100%, the Port is making an additional investment of \$455,000, plus interest costs (to total \$527,000) in the form of rent credits against the Tenant's percentage rent obligation. This additional investment allows the Port to effect urgently needed repairs to Pier 43½ without out-of-pocket expenditures. In addition to the benefit of having these financial obligations financed outside the Port, once complete, these repairs will ensure that the Port continues to enjoy its revenue stream from the parking lot once the costs of the repair have been repaid. Should the Port choose to agree to the modification, it is projected that all necessary permits could be obtained and construction could commence by December 2002.

Franciscan is of the opinion that to be required to shoulder 100% of the initial repair costs without full reimbursement would result in the undertaking of such repairs rendering the use of the leased premises uneconomical. By agreeing to permit reimbursement of all of Franciscan's costs through the application of rent credits, the Port is providing a reasonable financing vehicle to permit the completion of these much-needed repairs.

The Port's analysis anticipates that BCDC approval of the repairs will result in a reduction in total available parking spaces by as much as 20%. By applying this discount to pre-September 11th parking revenues and projecting 5% annual revenue growth, Port staff has determined that the \$1.3 million dollar repair costs plus interest, will be fully reimbursed within 50 calendar months following completion of the repairs. The total cost to the Port in rent credits would be approximately \$1,505,700, which includes costs of financing, of which 35% or approximately \$527,000 would be incremental to the Port's current obligations under the Lease.

The proposed repair and funding proposal would resolve the current substructure and repair needs of the parking lot and restore the site's economic value to the Port, the Franciscan, and Fisherman's Wharf business community. In addition, by curing the immediate public safety and blight problems, the community will be able to focus on long term improvements in Fisherman's Wharf, which will be the subject of a joint planning process to be initiated by the Port and BCDC. This joint planning process for the Fisherman's Wharf area is intended to update and establish consistent policies in the Port's Waterfront Land Use Plan and BCDC's San Francisco Waterfront Special Area Plan on acceptable uses, desired public access areas and a major new public plaza, and provisions for repair of pile-supported Port properties necessary to maintain the economic well-being of the area. The Franciscan parking lot is important, because it is within the area specified for further study to develop the major new public plaza.

The proposed Franciscan repair and funding arrangement applies only to the current repair work to the parking lot that has been scoped by Franciscan's engineer and signed off by the Port's engineering staff. No other repairs to the facility would be authorized under this arrangement. Anticipating agreement with the Port, the Franciscan is proceeding with obtaining financing, the preparation of construction drawings, permitting and contract bidding.

Notwithstanding the Port/BCDC joint planning process described above, a BCDC permit for the current repair proposal will be required. Port staff and Franciscan have met with BCDC staff and believe that agreement will be reached with regard to public access required as a condition of the BCDC permit. Franciscan is working closely with the Port Engineering Division to ensure that the work to be performed will meet Port and Regional Water Quality Control Board and Building Code requirements. Port staff proposes that the Port agree to waive Building Permit Plan Check and Inspection and Application Fees for this project.

Should the Port choose not to agree to this modification, under the terms of the Lease, the tenant may elect to terminate the Lease without further obligation, and in fact has indicated that it will so elect. This would result in the Port being solely responsible for all expenditures to repair the parking lot on an out-of-pocket basis in the near future. Should repairs not be made in the near future, further deterioration of the lot may make it impossible to repair with regard to a reasonable cost scenario, and regulatory agencies might delay the repair. Should this occur, the Port would be foreclosed with regard to any future revenue stream, and parking at Fisherman's Wharf would be severely impacted on a permanent basis. Moreover, the visual blight currently created by the deteriorating parking lot would worsen. These negative conditions would result in a continuing major negative impact on Fisherman's Wharf businesses overall.

RECOMMENDATION

Port staff recommends approval of the proposed Agreement.

Prepared by: Carol S. Anderson, Assistant Deputy Director
Nicolas Dempsey, Asset Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-53

- WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, By lease dated January 12, 1971, the San Francisco Port Commission entered into Port Lease No. L-7593 ("Lease") with Franciscan Restaurant for the operation of a parking lot on 72,254 square feet of Pier 43 ½; and
- WHEREAS, The lease requires Franciscan Restaurant to maintain and repair the substructure and deck surface of the premises; and
- WHEREAS, Under the terms of the Lease, Franciscan Restaurant is entitled to rent credits against its percentage rent obligations to the Port equal to sixty-five percent (65%) of its actual costs to undertake such repairs; and
- WHEREAS, Under the terms of the Lease, Franciscan Restaurant may terminate the Lease if it has determined that the cost of making needed repairs would render the use of the premises as a parking lot uneconomical; and
- WHEREAS, Franciscan Restaurant has requested Port Commission approval to allow rent credits for one hundred percent (100%) of its costs to undertake and finance needed repairs to the Pier 43 ½ deck surface and substructure; and
- WHEREAS, Franciscan Restaurant and Port staff have negotiated the terms of an Agreement ("Agreement") whereby the Franciscan will agree to undertake the repairs for rent credits against Franciscan Restaurant's percentage rent obligations under the Lease equal to one hundred percent (100%) of its actual cost to undertake and finance the needed repairs to the Pier 43 ½ deck surface and substructure not to exceed \$1.3 million; and
- WHEREAS, The continuing operation of a parking lot at Pier 43 ½ is of significant benefit to the City of San Francisco, the Port, the Franciscan, and the Port's other Fisherman's Wharf tenants; now, therefore, be it
- WHEREAS, the Franciscan Restaurant and the Port have agreed to waive and release any claims, known or unknown, arising from the condition of the Lease Premises prior to the date of the Agreement; and
- WHEREAS, the Franciscan Restaurant has agreed to cooperate with the pending joint planning process between the Port and BDCD for the Fisherman's Wharf area in the development and implementation of plan recommendations; now, therefore, be it

RESOLVED, That the San Francisco Port Commission hereby authorizes the Executive Director of the Port of San Francisco, or his nominee, to execute documents effecting the terms of an Agreement with Franciscan Restaurant in such form as may be approved by the City Attorney's Office, as outlined in the Memorandum to the San Francisco Port Commission for Agenda Item No. 6A for its October 29, 2002 regular meeting.

I hereby certify that the Port Commission at its meeting of October 29, 2002 adopted the foregoing resolution.

Secretary



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Progress Report on planning and design of the "Living Classroom" at Heron's Head Park

BACKGROUND

In January 2002, the Port commission approved Resolution 01-02, supporting Literacy for Environmental Justice's grant application to construct an energy-efficient classroom at Heron's Head Park. LEJ was awarded \$897,941 to facilitate community participation in design for the "Living Classroom", construct the facility, and provide educational programs for one year after construction. These grant funds were originally part of \$13 million that the City and County of San Francisco received from the State legislature to mitigate the impacts of the sale and possible expansion of the power plant in Potrero Hill and the shutdown of the Hunters Point power plant. The City in turn initiated a grant program, administered by the Commission on the Environment, to support projects focused on environmental justice, environmental health and energy efficiency in the Bayview Hunters Point and Potrero Hill communities.

Since the grant award and Port Commission approval, LEJ has contracted with the Ecological Design Institute, a non-profit division of Van DerRyn Architects and pioneer in green building design, to design the Living Classroom. LEJ has conducted three community workshops attended by local students and community members to establish basic design parameters and develop conceptual and schematic designs. LEJ has completed a geotechnical investigation, and submitted permit applications to the Office of Environmental Review and Bay Conservation and Development Commission.

THIS PRINT COVERS CALENDAR ITEM NO. 7A

CURRENT STATUS

The schematic design is complete, and the detailed structural and architectural design plans are in progress. On November 6th, LEJ is hosting an event for teachers, community members, and members of the sustainable energy and green building industries to promote awareness and participation in the project, and identify potential industry partners who may contribute materials or services. Also this fall LEJ will conduct another community workshop to design landscaping around the building and amphitheater. The project schedule currently anticipates LEJ soliciting bids for foundation construction in November 2002 and for building construction in January 2003.

FACILITY DESCRIPTION

The Living Classroom will consist of a one-story 1,450 square foot building with passive solar power. It will be constructed of straw bales and salvaged timber. The Living Classroom is designed to serve a variety of educational and community functions, and includes two restrooms, a kitchenette, small office and storage spaces, educational exhibits and a small outdoor amphitheater. The Living Classroom will be a model for energy efficiency and will be certified as a "Leader in Energy and Environmental Design" structure, in accordance with the City's Green Building Ordinance.

PORT'S ROLE

The Port will provide free of charge to LEJ 1,900 square feet in Heron's Head Park to build the Living Classroom. The Port is also contributing staff resources from the Port's regulatory, permitting, and engineering divisions to assist with project design, management, and obtaining the necessary permits.

The grant funding to design and construct the Living Classroom goes directly to LEJ, and includes up to \$10,000 in reimbursable expenses for inspection fees and labor provided by Port staff. Once the Living Classroom is built, the Port will be responsible for repairing and maintaining the outside structure of the building. LEJ will be the primary caretakers and users of the facility. Port staff, in consultation with the City Attorney, will negotiate a lease agreement with LEJ to further define each party's responsibilities in the partnership. A final lease will be brought back to the Port Commission for its approval.

Prepared by: Carol Bach, Environmental Health and Safety and Brad Wilson, Engineering



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *[Signature]*
Executive Director

SUBJECT: Request for authorization to execute Third Amendment to Professional Services Contract No. CT3980009, DOWNTOWN FERRY TERMINAL, with San Francisco Port Management Consultants for additional construction support work and project management assistance.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO EXECUTE A THIRD AMENDMENT TO CONTRACT NO. CT3980009 WITH SAN FRANCISCO PORT MANAGEMENT CONSULTANTS FOR A NOT-TO-EXCEED SUM OF \$20,000.

Introduction

Port staff requests that the Commission approve a Third Amendment to the existing professional services contract with San Francisco Port Management Consultants (a joint venture of The Jefferson Company and RUST), the construction management consultant for the Downtown Ferry Terminal Project (DFT), also known as the San Francisco Ferry Terminal. This contract amendment is necessary for the extended construction schedule, to assist with potential claims, and to provide project management assistance to Port staff. Through the contract amendment, Port staff will obtain necessary and critical support services to complete the construction of the Downtown Ferry Terminal Project.

Background

In July 1998, the Port selected and contracted with the San Francisco Port Management Consultants (Consultant) for construction management services on the Downtown Ferry Terminal Project. The Consultant's scope of services consisted of two phases. Phase I consisted of pre-construction services, including partnering assistance, constructability analysis and value engineering, schedule refinement, construction cost review, bid document review and public outreach planning. Phase II services consisted of construction management services including

construction administration, inspections and quality control, cost and schedule monitoring, construction coordination, claims management, payment and change order processing and document control. The original contract was awarded for a not-to-exceed amount of \$522,527 (\$113,960 for Phase I and \$408,567 for Phase II).

In February 2001, the Commission approved the first amendment to the contract, for \$223,731. The first amendment provided for additional construction management and project management services related to additional construction work items (including the East Promenade and the new breakwater) and provided required special inspection services.

In November 2001, the Commission approved the second amendment to the contract for \$95,635. The second amendment provided for services related to changes and additions to the construction scope (including the North Marginal Wharf and Gate C for Golden Gate Ferry).

As discussed below, additional construction delays, potential claims and other on-going issues have created the need for additional services from the Consultant. Staff has negotiated with the Consultant for a not-to-exceed price of \$20,000 to complete the additional tasks contemplated by this Third Amendment to the Consultant's contract. With the approval of this contract amendment, the construction management costs will total \$861,893 representing 4.9 percent of the projected construction costs of \$17.5 million. The following provides a summary of the contract amendments to date:

Original Contract (July 1998)	\$522,527
First Amendment (February 2001)	223,731
Second Amendment (October 2001)	95,635
<u>Third Amendment (October 2002)</u>	<u>20,000</u>
Total Contract (as amended)	\$861,893

Scope of Proposed Consultant Contract Amendment

The construction contract for the ferry terminal is nearing completion. The new South Ferry Terminal opened for service in October 2001, the new North Ferry Terminal opened for service in May 2002 and the Pier ½ rehabilitation work was completed in September 2002. Only punch list items remain; however, there are changes in circumstances that warrant the need for additional services of the Consultant:

- **Potential Claims and Response to Public Records Requests:** The Consultant and Port staff have been required to respond to numerous public records requests and other issues related to on-going arbitration proceedings between the prime contractor, Miller Thompson Constructors, and one of their subcontractors, Lucas Marine Construction. While no claims have been filed against the Port, the project team has been and will likely continue to be involved in the issue between Miller Thompson Constructors and their subcontractor. This will likely require additional document control services and potentially additional claims management services into early 2003.

- Project Management Assistance: Further project management services are required to ensure that the remaining project administration and closeout activities are completed in accordance with the project requirements. This is particularly critical with respect to processing final payments to the contractor and consultants, closing out project permits and preparing final reports and reimbursement requests for the Federal and State grants for the project.

Summary

Based on the need for these additional services to complete this important project, Port staff requests Commission authorization to execute the proposed Third Amendment to the existing contract with San Francisco Port Management Consultants. This will enable the Port to efficiently complete the Downtown Ferry Terminal construction project.

Prepared by: Nita Mizushima, Project Manager and Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 02-50**

- WHEREAS, In July 1998, with Port Commission authorization, Port Staff contracted with San Francisco Port Management Consultants (Consultant) for construction management services for the Downtown Ferry Terminal Project; and
- WHEREAS, In January 2000, the Port commenced with the construction of the Downtown Ferry Terminal project and, since that time, Port staff has identified the need for project management services and further construction management services from the Consultant; and
- WHEREAS, Due to the additional length of the construction project and additional scope of work as described in the staff memorandum presented with this resolution, Port Staff requires additional construction management and project management services for project completion; and
- WHEREAS, Port Staff has met with the Consultant and negotiated a not-to-exceed price of \$20,000 for the additional construction management and project management services; and
- WHEREAS, The additional construction management and project management services which are the subject of the proposed contract amendment are essential for the completion of the Downtown Ferry Terminal Project; now therefore, be it
- RESOLVED, That the Port Commission hereby authorizes staff to execute the Third Amendment to Contract No. CT3980009 with San Francisco Port Management Consultants for additional services not-to-exceed the sum of \$20,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 29, 2002.

Secretary



MEMORANDUM

October 23, 2002

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams
Hon. Pius Lee

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Authorization to apply for, accept and expend \$75,000 in grant funds from the Metropolitan Transportation Commission, Transportation for Livable Communities (TLC) Planning Grants Program, for preparation of the Fisherman's Wharf Area Plan.

DIRECTOR'S RECOMMENDATION: Authorize the Port's Executive Director to apply for, accept and expend \$75,000 in grant funds from the Metropolitan Transportation Commission, Transportation for Livable Communities (TLC) Planning Grants Program, for preparation of the Fisherman's Wharf Area Plan

Background

On July 20, 2000, the San Francisco Port Commission and San Francisco Bay Conservation and Development Commission adopted amendments to their respective plans, the *San Francisco Waterfront Land Use Plan*, and the *San Francisco Bay Plan and San Francisco Waterfront Special Area Plan*. These amendments established consistency between each agency's plans for the San Francisco waterfront between Pier 35 and China Basin. The adopted amendments included the following language regarding Fisherman's Wharf:

Develop a major public plaza extending to the Bay within the area bounded by Jefferson, Powell and Taylor Streets. This would involve establishing a Fisherman's Wharf plaza planning process involving the tenants, Port, San Francisco Planning Department, BCDC, Save the Bay and other interested parties to address the many issues associated with a plaza at Fisherman's Wharf and to establish a plan and implementation program for effectuating the plaza as part of an overall review of the Special Area Plan policies in the Fisherman's Wharf area.

This Print Covers Calendar Item No. 8A

Work Program

Port and BCDC staffs are drafting a proposed work program for development of the Fisherman's Wharf Area Plan. Preparation of the Area Plan will involve extensive input from stakeholder groups in Fisherman's Wharf and participation from both the BCDC and Port Commission. On November 12, 2002, Port staff will present the proposed work program to the Port Commission and request feedback and direction on potential project issues, the planning process, and potential products that may result from the planning effort. Port staff will also present a budget estimate for the planning study. Technical assistance from other City departments and/or consultants may be needed in the following areas: (1) Transportation and parking; (2) Economic feasibility; (3) Environmental analysis; (4) Meeting facilitation at public workshops; and (5) Illustrations.

The proposed work program is expected to address the following issues:

- Revise Port and BCDC policies to facilitate redevelopment and repair of existing structures
- Address access, circulation and parking concerns
- Develop a plan for a public plaza
- Create a shared vision for a new shoreline configuration
- Prepare plan amendments for inclusion in WLUP and SAP on land use, public access, and pier repair
- Develop an implementation plan and funding strategy
- Other issues as defined by the community

Project Funding

The Port of San Francisco would fund preparation of the Fisherman's Wharf Area Plan through the Planning and Development Division's Capital Project Object (CPO) 911, Land Use Planning. Given the potential costs associated with technical assistance from consultants or other City departments, however, staff also is seeking financial assistance from outside sources, including MTC's Transportation for Livable Communities Planning Grant (TLC) Program, which requires a local match. The Port would provide a local match of 42%, or \$55,000, from CPO 911 to fund the preparation of the Area Plan. The estimated budget for preparation of the Area Plan, including technical assistance from consultants or other City departments, is approximately \$130,000.

MTC's Transportation for Livable Communities Planning Grant Program

MTC's Transportation for Livable Communities Planning Grant (TLC) program helps bring together transportation and community planners, urban designers, and community stakeholders to engage in a community planning and visioning process. MTC provides grants for planning projects that link transportation investments with land-use decisions that are geared to the needs of pedestrians, bicyclists, and transit riders, and that are designed within the context of the area's larger community development and redevelopment activities. Typical outcomes of the community planning process include, but are not limited to, transportation/land-use plans, concept designs, and implementation plans.

Evaluation criteria for the TLC grant includes: A collaborative planning process with community stakeholders; supports objectives of MTC's adopted Transportation/Land-Use Connection policy; provides significant community benefit (e.g. walkability, safety and security, traffic calming,

economic development, protection of community cultural, historic, or environmental resources); public transit access or amenity; parking design, streetscape design; gap closure of an essential pedestrian/bicycle route or network; and access to daily needs); synergistic effects; evaluation of issues (e.g. accessibility/ADA, economic/financial considerations, safety and security); will result in a discrete and clear work product; structured to be completed in one year; project innovation; project readiness; and local match.

The proposed Fisherman's Wharf Special Area Planning process meets nearly all the above evaluation criteria. Among other goals, the proposed Planning process will promote a collaborative planning process with community stakeholders, identify key transportation improvements to drastically improve pedestrian and vehicular circulation in Fisherman's Wharf, and establish an open space plan incorporating a major public plaza. Together, these and other project goals will lead to significant community benefits in Fisherman's Wharf. Furthermore, the planning process is structured to be completed in about one year, and will include a local match.

Environmental Review

Data collection for environmental review of the Fisherman's Wharf Area Plan would occur throughout the planning process, with environmental review being completed prior to Commission consideration of plan and policy documents.

Commission Action

Port staff recommends that the Port Commission authorize the Executive Director to apply for, accept, and expend \$75,000 in grant funds from MTC's Transportation for Livable Communities Grant Program.

Prepared by:
Dan Hodapp
Senior Waterfront Planner

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 02-54

- WHEREAS, the Metropolitan Transportation Commission (MTC) is the transportation planning, financing and coordinating agency for the nine-county San Francisco Bay Area; and
- WHEREAS, MTC has announced the availability of planning grants, as part of its Transportation for Livable Communities (TLC) Planning Grants Program, for the development of planning projects that link transportation investments with land-use decisions that are geared to the needs of pedestrians, bicyclists, and transit riders, and are designed within the context of the area's larger community development and redevelopment activities; and
- WHEREAS, development of the Fisherman's Wharf Area Plan through a collaborative planning process with community stakeholders, will assist in the revitalization of the area by identifying key transportation improvements to improve pedestrian and vehicular circulation in the Wharf, establishing an open space plan incorporating a major public plaza, and will lead to significant community benefits in Fisherman's Wharf; and
- WHEREAS, the Plan is an important part of the Port's Waterfront Land Use Plan; and
- WHEREAS, environmental review would be completed prior to Commission consideration of any plan and policy documents; and
- WHEREAS, development of the Fisherman's Wharf Area Plan is consistent with the goals of the TLC Planning Grants Program, and appears eligible for funding under this program; now, therefore, be it
- RESOLVED, that the San Francisco Port Commission hereby authorizes the Port's Executive Director to apply for, accept and expend \$75,000 in grant funds from the Metropolitan Transportation Commission, Transportation for Livable Communities (TLC) Planning Grants Program, for preparation of the Fisherman's Wharf Area Plan, and hereby authorizes the execution of such further documents as are necessary, for the Port to accept and expend \$75,000 in grant funds from MTC's TLC Planning Grants Program; and, be it further
- RESOLVED, that the Executive Director is hereby authorized to sign any contract agreements that may be necessary to receive said grant funds from MTC's TLC Planning Grants Program, and, if appropriate, indemnifying MTC for liability associated with the Area Plan to the extent approved by the City's Risk Manager and the City Attorney's Office.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 29, 2002.

Secretary

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SAN FRANCISCO PORT COMMISSION

OCTOBER 29, 2002 MINUTES OF THE SPECIAL MEETING

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HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE McCARTHY
HON. BRIAN McWILLIAMS
HON. PIUS LEE

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO PORT COMMISSION

MINUTES OF THE SPECIAL MEETING OCTOBER 29, 2002

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:05 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy, Brian McWilliams and Pius Lee.

2. APPROVAL OF MINUTES - October 8, 2002 Regular Meeting

Commissioner McWilliams made some corrections to page 2 of the minutes.

ACTION: Commissioner Brandon moved approval of the minutes as amended; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the amended minutes of the October 8, 2002 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report:

Mr. Wong reported that the recent World Series Games highlighted once again a unique feature at Pacific Bell Park, McCovey Cove and bay access to baseball. Mr. Wong introduced John Davey, Maritime Deputy Director, who gave a brief presentation on the activities and the security measures the Port had in place during the games. Mr. Davey indicated that during the World Series games, Port staff worked with the San Francisco Police Department Marine Unit, the U.S. Coast Guard, and also received additional support from the Port of Richmond, Richmond Police, Sonoma and Marin County sheriff departments, and the San Francisco Fire Department. He thanked Sgt. Danny Lopez from the SF Marine Unit who helped coordinate support from the different agencies.

Mr. Wong thanked Peter Dailey, John Davey and the rest of the maritime staff for all their efforts during the playoffs and World Series. He also thanked ESPN and FOX who provided media coverage during the games. The Ferry Building received rave reviews from partygoers who attended the Monday night party. Pier 48 was also used as one of the party venues. He thanked Alex Lee and his staff for getting Pier 48 ready for the parties.

Commissioner Hardeman indicated that the SF Giants organization was very kind to the group of people from San Francisco who attended the games in Anaheim. On behalf of the Port, he sent a letter of appreciation to Peter Magowan and Jack Bair for their help during the games. The Ferry Building and Pier 48 definitely shined during the games.

4. CONSENT

- A. Request for approval to terminate Lease No. L-12899 with Technologic Partners, Inc. for offices at 10 Lombard, Suite 250, SWL 318. (Resolution No. 02-51)
- B. Request for approval of lease assignment from Cohan Seafood Company to T & P Flannery Seafoods, Inc. (Resolution No. 02-52)

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; Resolution Nos. 02-51 and 02-52 were adopted.

5. MARITIME

- A. Request for approval of a 5-year Marine Terminal Agreement with SK Shipping at Pier 80. (Resolution No. 02-49)

Mr. Peter Dailey, Maritime Director, presented the item and requested Commission's approval.

ACTION: Commissioner Lee moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor; Resolution No. 02-49 was adopted.

6. REAL ESTATE

- A. Request to enter into an agreement with the Franciscan Restaurant for the repair of the pier surface and substructure at Pier 43-½. (Resolution No. 02-53)

Mr. Nic Dempsey, Asset Manager, presented the item and requested Commission's approval.

ACTION: Commissioner Brandon moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor; Resolution No. 02-53 was adopted.

7. ENGINEERING & MAINTENANCE

- A. Informational presentation regarding planning and design of the "Living Classroom" at Heron's Head Park.

Mr. Brad Wilson, Engineering Department, presented the item. He introduced Jenn Sramek and Dana Lanza from the Literacy for Environmental Justice who showed the Commission a model of the proposed classroom. Ms. Sramek indicated that the building is an optic green house classroom. Approximately 1000-1500 students per year will use the building and will be able to learn about solar energy as well as wind energy. The building will be made of straw bound construction. The wastewater from the building will be treated through a process called the "living machine," which is a wetlands treatment system. The wastewater will go through several tanks and to an outflow, which will eventually be let out into the wetlands. It will be the first certified green building of San Francisco, which is a grading process that Ecological Architects use. They have received a lot of positive feedback from the community especially from the schools, teachers and

parents. This building was also mentioned in the Architectural Digest. She thanked the Commission for partnering with them on this project. Ms. Sramek invited the Commission to an event to benefit the building on November 6 at 7 p.m. at the Crissy Field Center.

- B. Request for authorization to execute Third Amendment to Professional Services Contract with San Francisco Port Management Consultants for the Downtown Ferry Terminal Project. (Resolution No. 02-50)

Ms. Nita Mizushima, Chief Harbor Engineer, presented the item and requested Commission's approval.

Commissioner Brandon inquired about the Port's involvement and the cost when the dispute is between the contractor and its subcontractor. Ms. Mizushima replied that the San Francisco Port Management Consultants are the staff assigned to respond to the public records request thereby necessitating to amend the contract to pay for the additional services.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-50 was adopted.

8. PLANNING & DEVELOPMENT

- A. Authorization to apply for, accept and expend \$75,000 in grant funds from the Metropolitan Transportation Commission, Transportation for Livable Communities (TLC) Planning Grants Program, for preparation of the Fisherman's Wharf Area Plan. (Resolution No. 02-54)

Ms. Diane Oshima, Planning & Development, presented the item and requested Commission's approval.

ACTION: Commissioner Lee moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 02-54 was adopted.

9. NEW BUSINESS/PUBLIC COMMENT

Maury Polse, Tour Operator, reminded the Commission about the dangerous activities of the bushman at the wharf. He requested the Commission to convene a public meeting to discuss the problem at the wharf.

Commissioner Hardeman suggested that Mr. Polse contact staff regarding his request.

10. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

At 4:32 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., S. F. Superior Court Case No. 318360, filed January 25, 2001.

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*The Mills Corporation: Steven J. Jacobsen
- b. Property: Pier 27
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Bauer Limousines: Gary Bauer
- c. Property: 1500 Sansome Street
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*IN Radio: John Douglas
- d. Property: Pier 45 Sheds B & D
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Monterey Fish Company: Salvatore Tringali
*Peninsula Seafood of San Bruno, Inc. dba All Shores Seafood: Dan Strazzullo
*Seafood Wholesale: Minh Tran
*North Atlantic S.F. Inc.: Charlie Akwa
*Costarella Seafood: Bob Costarella
*La Rocca Seafood Inc.: Michael La Rocca
*T.J. Nevada LLC: Jimmy Fong
*Pezzolo Seafood: Ron Pezzolo
- e. Property: Pier 27
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*American Red Cross: Joseph Lund and Harold Brooks
- f. Property: Rincon Park
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*SF Redevelopment Agency: Amy Neches

- g. Property: Pier 92
Person Negotiating: Port: Kenneth Winters, Director of Real Estate
*Pacific Cement: Rick Ramirez

11. RECONVENE IN OPEN SESSION

At 6:20 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in executive session; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

12. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:20 p.m.

